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NEED FOR AN INSPECTOR GENERAL AT THE NUCLEAR REGULATORY COMMISSION

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

APRIL 9, 1987

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NEED FOR AN INSPECTOR GENERAL AT THE NUCLEAR REGULATORY COMMISSION

THURSDAY, APRIL 9, 1987

U.S. Senate,
Committee on Governmental Affairs,
Washington, DC.

The Committee met, pursuant to notice, at 9 a.m., in room 342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn, Heinz, Chiles, Sasser, and Trible.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman Glenn. The hearing will be in order.

Today we continue our series of hearings we have been conducting on ways to fight waste, fraud, mismanagement in Government, and to foster efficiency in Government, which is one of the primary responsibilities in the oversight function of this Committee. Our earlier hearings reviewed and documented the success of the statutory Offices of Inspector General, of which there are presently 19. Most of these offices were created pursuant to the Inspector General Act of 1978, or amendments thereto.

In the past 5 years these offices have saved an estimated $71 billion in wasteful spending for the American taxpayer. They have monitored the affected department and agency activities on an internal and independent basis. Their investigations have resulted in over 16,000 criminal prosecutions and 15,000 administrative actions.

On April 3, 1987 I introduced a bill, S. 908, which has been cosponsored by every member of this Committee, to create four new statutory Inspectors General—for the Department of the Treasury, the Federal Emergency Management Agency, the Office of Personnel Management, and the Nuclear Regulatory Commission.

Today our focus is on the NRC, the independent agency responsible for regulating the commercial use of nuclear power in the United States with the goal of preserving public health and safety and protecting the environment.

I come to these hearings this morning as a big booster of the NRC. I have defended the funding for NRC and I have defended NRC independence when the Administration wanted to dilute it by changing the NRC's responsibilities.

To monitor the integrity of its activities, in 1975 the NRC created an Office of Inspector and Auditor [OIA], to provide the Commissioners with objective information on problems within the Commission. In 1982, as a result of a heightened awareness by the NRC that allegations of possible wrongdoing by licensees and applicants required a vigorous response, the NRC created its Office of Investigations [OI].

The existence of these offices within the agency have helped to lessen the public's doubts about the relative safety of commercial nuclear power. I am, however, now deeply disturbed about current NRC operations—and particularly the impact of certain management actions on the mission and functions of these offices.

First, I believe there are serious deficiencies in OIA's objectivity and investigative practices which have diminished the effectiveness of the office. Despite the Commission's assertions to the contrary, it does not appear that OIA has been allowed to perform the essential functions of a statutory inspector general office. I think there is a need to restore credibility to the internal "watchdog" function at the NRC.

The bill I mentioned earlier, S. 908, the Inspector General Act Amendments of 1987, incorporates GAO's recommendation for establishing a new statutory Office of Inspector General in the NRC. This change is intended to create a more independent atmosphere for thorough internal audit and investigative activities.

The Inspector General will report to the Chairman of the Commission and Congress concerning significant abuses or deficiencies and make recommendations for corrective action. In my view, this change will benefit the NRC's management operations and aid Congress' oversight function. According to the balance of powers, Congress does have an important oversight responsibility.

As a practical matter, the bill "transfers" the Office of Inspector and Auditor, into the new Inspector General office. However, by law, the Inspector General must be appointed by the President with the advice and consent of the Senate and can be removed only by Presidential action. With these protections the new Inspector General will be able to thoroughly investigate allegations of employee misconduct or mismanagement without fear of removal.

This is not a trivial matter. This Committee has discovered evidence which suggests improper communications between the NRC and licensees concerning the NRC's regulatory activities. And the evidence further suggests that the NRC has been incapable of policing such misconduct on its own.

One example illustrates the problem. It appears that in 1983 important NRC documents relating to quality assurance problems at a nuclear power plant were leaked from a Commissioner's office to the licensee. In fact, a representative of the licensee distributed the leaked documents to his colleagues with the proviso that further distribution be limited, and I quote, "to protect the source within the NRC."

Incredibly, when the Commission was confronted with solid evidence of the possible leak from a Commissioner's office, the matter was not referred to OIA. Instead, Commission level officials made a decision that the matter should be handled within the Commissioner's office and a minimal "investigation" followed with apparently little effort to make a record of such "investigation."

That episode alone demonstrates the need for a truly independent inspector general with the authority and expertise to investigate potential wrongdoing wherever it occurs, even if involves a Commissioner's office.

My second concern relates to recently adopted NRC policies which have limited the effectiveness of the Office of Investigations to investigate external wrongdoing and refer potential criminal matters to the Department of Justice. More than anything else, such actions have served to strain the NRC's important relationship with the Justice Department and diminish Congress 'and the public's trust in the regulation of commercial nuclear power. After all, the NRC is supposed to be a watchdog, not a lapdog.

S. 908 addresses the need for additional statutory protections for the Office of Investigations. The bill codifies the recommendation of the Justice Department that OI continue to report to and be under the general supervision of the Commission. I believe, and apparently so does the Commission, that this relationship best serves the NRC's need for vigorous detection and disclosure of deliberate wrongdoing by NRC licensees and applicants.

The bill also addresses the need for objectivity in OI investigations to ensure that the Commission and, if necessary, the Justice Department are fully informed of potential criminal wrongdoing by licensees and applicants. To this end, OI is given certain authorities which parallel those provided to independent inspectors general. These are intended to enhance OI's independence and improve the Commission's credibility as the regulator of health and safety in the commercial nuclear industry.

In closing, let me say that the purpose of this hearing is not to malign any individual associated with the agency or create innuendo. Rather, I am concerned about what I see as timid controls on internal affairs and troublesome limitations on external investigations.

This bill is intended to restore confidence in the NRC's ability to achieve its regulatory mission. I add that the Committee looks forward to hearing a great deal of testimony this morning. That is the reason we started this a little earlier than normal on the Hill because it will take a long time to run through all of this.

The hearing will include testimony from the five members of the Commission. The Committee had originally planned the hearing so that the testimony on current NRC operations would first be presented by other witnesses—the normal Committee procedure—which would provide the Commissioners an opportunity to include comments on such testimony in their presentation to the Committee. However, the Commissioners have insisted on testifying first, and I am quite happy to acquiesce to that.

I think the normal thing would have been to have them reply to some of the other statements, but I have assented to their request and so they will go first this morning.

We will have all of our witnesses sworn this morning, so gentlemen, before we start, if you would rise we will swear you in.

Do you gentlemen swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ZECH. I do.

Mr. ROBERTS. I do.

Mr. ASSELSTINE. I do.

Mr. **Bernthal**. I do.

Mr. **Carr**. I do.

Chairman **Glenn**. Mr. Lando Zech is the Chairman of the U.S. Nuclear Regulatory Commission. Mr. Zech, we look forward to your testimony.

TESTIMONY OF LANDO W. ZECH, JR., CHAIRMAN, U.S. NUCLEAR REGULATORY COMMISSION;[1] THOMAS M. ROBERTS, JAMES K. ASSELSTINE,[2] FREDERICK M. BERNTHAL, AND KENNETH M. CARR, COMMISSIONERS, U.S. NUCLEAR REGULATORY COMMISSION

Mr. **Zech**. Thank you, Mr. Chairman.

Mr. Chairman, Members of the Committee, my fellow Commissioners and I are pleased to appear before you today to discuss S. 908, the Inspector General Act Amendments of 1987, as it relates to the Nuclear Regulatory Commission.

With your permission, Mr. Chairman, I will submit my prepared statement for the record and summarize it briefly.

Chairman **Glenn**. That will be fine. Concerning all the statements this morning, if you wish to summarize them that will be fine. They will be included in the record.

Mr. **Zech**. Thank you, sir. Mr. Chairman, regarding the NRC Inspector General, S. 908 would add the NRC, along with several other agencies, to the list of agencies and departments covered by the Inspector General Act of 1978. This would be accomplished essentially by transferring the functions of NRC's present Office of Inspector and Auditor to a newly established statutory Office of Inspector General in the NRC.

Let me say that none of us wish to quarrel over the basic concept of an inspector general. The need for an independent and objective internal investigative and audit unit within the NRC was recognized at the inception of the agency in 1975 when the first Commissioners established the present Office of Inspector and Auditor.

The Commission relies on the integrity of its personnel. The functions of OIA are to assure effectiveness, efficiency and integrity of all NRC operations. For the past 12 years this office has performed the essential functions of an IG with confidence and without interference from the Commission.

The bill before you would not appreciably change the mission of OIA as it currently exists. By bringing OIA under the Inspector General Act there would be modifications to its authority and duties, including some, such as the requirements to review proposed legislation affecting the agency, and to report to Congress semiannually that would be additional burdens for a small office.

The principal change, however, would be to make the OIA director or inspector general, as it would become, subject to the appointment and removal by the President rather than by the Commission. This may appear to be a small change, but it is a change which merits some reflection before the Congress acts to extend for the first time what may be a perfectly sound concept within the confines of the Executive Branch to the somewhat different environment of a small independent regulatory commission like the NRC.

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[1] See p. 104 for Mr. Zech's prepared statement.

[2] See p. 115 for Mr. Asselstine's prepared statement.

We have not one, but five independent officials acting jointly to manage the agency and to act in the public interest. We are ourselves Presidentially appointed and confirmed by the Senate. Our licensing processes operate in an open and highly charged environment in which the staff's work product is tested and retested before hearing boards, appeal boards, the Advisory Committee on Reactor Safeguards, and the Commission itself.

Under the circumstances, it is difficult for us to see how providing the Commission with an inspector general subject to Presidential removal on demand would better assure effectiveness, efficiency and integrity in the NRC's operations.

Regarding the Office of Investigations, Congress entrusted the Nuclear Regulatory Commission with regulating the commercial uses of nuclear energy. In brief, our mission is to protect the public health and safety, common defense and security, and the environment.

In keeping with that mission, the Commission expects integrity of its licensees, their employees and others in the regulated industry. The Commission does not want persons who intentionally violate Commission regulations and licenses conditions, falsify records, lie, or otherwise manifest serious deficiencies of character to handle hazardous nuclear materials or to operate nuclear power plants.

For a variety of reasons the Commission, in 1982, created an Office of Investigations, OI, staffed by trained investigators to investigate wrongdoing by licensees or others in the regulated industry and thereby assist the Commission, making licensing and enforcement decisions.

If these investigations also indicate the possibility of criminal misconduct, OI makes appropriate referrals to the Department of Justice. As a result significantly more attention is devoted to activities involving wrongdoing.

It is important to understand the relationship of OI activities to the fundamental health and safety mission of the NRC. The Kemeny Commission, as well as other studies, that followed the accident of Three Mile Island concluded that the NRC had not been devoting sufficient attention to the adequacy of operators and management of nuclear facilities. Many changes were made to enhance the qualification and training of people to the regulatory process.

In addition, it was believed necessary to strengthen the NRC's ability to investigate actions of people, non-NRC employees, who may have participated in or condoned improper behavior. Such improper behavior can have a significant impact on safe operation of nuclear facilities.

Timely and objective investigations are important to the regulatory process as part of day to day safety oversight. We therefore do not support any legislation to modify this important activity.

Oversight by the Commission is sufficient to assure that OI activities continue to provide results needed to conduct agency business. We must in all candor note that the Commission is concerned with the management of the investigative process, especially to assure that attention is given to the matters of highest importance and to the timeliness of completion.

S. 908 includes specific language relating to the Commission's Office of Investigations. It would make it a statutory requirement that OI report to and be under the general supervision of the Commission itself. This is already the agency practice.

The bill also includes language to prevent the Commission from interfering in initiation, carrying out, or completion of any investigation by OI. Apparently the Director of OI would still be subject to appointment and removal by the Commission, not the President.

The Commission objects to these provisions. First, we believe that legislation affecting the manner and ability of the Commission to carry out its statutory mission ought to be considered as amendments to the Atomic Energy Act or to the Energy Reorganization Act and not as isolated amendments to an unrelated statute.

Second, we believe the provisions themselves are objectionable on their merits. The requirement for OI to report to the Commission is essentially an attempt to resolve once and for all by statute what has been a matter of debate since OI was created—whether OI should report to the Commission or to the Executive Director for Operations, EDO, who supervises the rest of the regulatory staff.

The Commission believes that OI's independence and usefulness can best be preserved if it remains a Commission-level office. However, we believe it should be our management prerogative to change such arrangements for this and other offices if we feel it necessary without having to come to Congress to do so.

Of greater concern is the language which, on the one hand, gives the Commission general supervisory powers over OI while on the other hand effectively taking them away. This language seems to be rooted in misconceptions about OI's purpose and the Commission's statutory role over OI.

The proposal may stem from a misconception that the Commission routinely interferes with OI investigations or conclusions. In point of fact, the Commission has never prohibited or attempted to prohibit OI from carrying out or completing any investigation or from referring any violation of criminal law to the Department of Justice.

Criminal violations—criminal referrals to Justice are reviewed by the Office of the General Counsel to ensure that OI has identified the appropriate statutes, regulations or other requirements that form the basis for a criminal violation. This is particularly important if the alleged violation stems from the Atomic Energy Act for which we have particular expertise.

The process of referral is a matter of ongoing discussion with the Department of Justice. The proposal is also ill conceived if the intent is to suggest that the mission of OI is somehow independent of or greater than the mission of the NRC itself. That fact is, OI was created to serve the NRC's overall mission to protect the public health and safety, the common defense and security, and the environment.

As long as the NRC operates in a world of constraints, both of time and of resources, it will be necessary for the Commission to make judgments about priorities among competing interests. While the Commission has made a conscientious effort not to interfere directly in OI investigations, it has established a threshold for initiating and terminating investigations and criteria for establishing priorities among them.

We reserve the right to take appropriate supervisory action if our guidelines are not followed. Denying us such authority would seriously diminish the value of OI and we believe adversely affect our ability to carry out our statutory responsibilities.

Mr. Chairman, that completes my oral statement. However, Mr. Chairman, I am aware that there are three NRC employees that have been asked to testify after the NRC Commissioners testify. Late last night I received a copy of their prepared testimonies.

I would just like to point out briefly that I believe the Commission is aware of most of the concerns that you will hear from these NRC employees. However, concerning the Comanche Peak issue, the Commission is still in the process of reviewing and analyzing the OIA report.

It is clear that the report raises serious issues which warrant this Commission review. I would like to emphasize that this review is still in progress and will receive careful attention at the Commission level.

The Commission will also be addressing other management issues raised by senior NRC managers. Let me assure you, Mr. Chairman that our intention is that these issues will be resolved.

Thank you, Mr. Chairman.

Chairman **Glenn**. Good. Thank you, Mr. Chairman. I appreciate your comments this morning.

I understand that Commissioner Asselstine has a statement also.

Mr. **Asselstine**. Thank you, Mr. Chairman. I would like to add a few comments to the Commission's testimony.

In general, I support S. 908. I favor legislation to create an independent statutory inspector general office for the NRC. I also support the goal of subsections (d) and (e) of Section 8B of the bill, to protect the independence of the Commission's Office of Investigation. However, the provisions which pertain to OI may not be sufficient—in my view—as written, to accomplish that goal. I will outline briefly some additional provisions the Committee may want to consider in that area.

I support the creation of a statutory Inspector General for the NRC. The function of an inspector general is to serve as a watchdog for the agency to help ensure that the mission of the agency is carried out effectively and efficiently. The mere existence of an independent watchdog also helps to assure the public of the integrity of an agency's program. In addition, reports from an inspector general can be a useful tool for agency management. They provide an objective, independent look at how the agency functions and they make suggestions for improvement.

However, in order to be an effective watchdog the inspector general must be credible; that is, the office must be competent, it must be independent, and it must have the highest integrity. An IG's reports must be respected as being thoughtful, thorough and complete. It is difficult to produce change in an organization based on an IG report that one can easily dismiss as inadequate.

The IG office must also be above reproach. There must be no question about the offices integrity or its freedom to investigate and report factually about anyone or anything in the organization. There must not be even an appearance of a lack of integrity or independence or an IG's report loses its moral force.

The NRC is in need of a credible inspector general office. For a variety of reasons the office which now performs that function, the Office of Inspector and Auditor lacks the necessary credibility. Just one example of this is a case in which I recently had great difficulty in convincing an agency employee to report his concerns about agency managers to OIA. He and others who approached me with concerns about the performance of senior NRC staff managers said that they did not trust the office to do an adequate job.

I should note that this lack of credibility is not simply a problem with OIA's current management. Rather, OIA's lack of credibility goes back over several years. In my view, creating an independent statutory inspector general could help to restore credibility to the agency's IG function. This will help the Commission to better manage the agency, and it will help to ensure public trust in the NRC. For these reasons I support that portion of S. 908 which creates an independent statutory inspector general for the NRC.

S. 908 also contains provisions pertaining to the NRC's Office of Investigations [OI]. The bill provides that OI "shall report to the Chairman and other members of the Commission" and shall not be subject to supervision by other employees of the Commission. The bill also prevents the Commission from prohibiting OI from "initiating, carrying out or completing an investigation" or a criminal referral to the Department of Justice.

In general, I support efforts to protect the independence of OI. The credibility of the NRC's Office of Investigations is just as important as the credibility of its inspector general.

The NRC does not have the resources to do more than audit licensees programs. We must be sure, therefore, that licensees are not purposefully circumventing our regulations or failing to report significant information necessary for the NRC to make informed decisions. By investigating and providing the information necessary to support enforcement action when a licensee willfully violates NRC regulations, OI's efforts help to ensure the integrity of licensees' programs so that the agency can rely on the licensees to carry out their responsibilities.

Further, there is a direct connection between the respect of the public for the NRC's investigatory efforts and their belief in the integrity of the agency's regulatory process. A strong, competent and independent OI helps to ensure that people believe the agency is truly interested in uncovering wrongdoing and in enforcing its regulations. This in turn leads to enhanced trust in the NRC to protect the public health and safety

Efforts to make the office more independent and to protect the integrity of OI's investigations can only help to ensure that OI can continue to perform this vital function. However, I am not sure that subsections (d) and (e) of Section 8B are sufficient to accomplish that goal.

First, I agree with the Commission's testimony that the Inspector General statute may not be the best place for provisions regarding OI. The intent of the bill does not appear to be to make OI a part of the IG office.

Second, while it is useful to require that OI report to the Commission, that may not be enough to ensure OI's independence. The bill does not, for example, require that there actually be an Office of Investigation. It does not amend the Energy Reorganization Act to make the office a statutory office.

In addition, the bill does not require that the office be provided with adequate resources, and it does not require that the NRC staff refer matters to OI. While the bill prohibits interference in OI investigations, it does not establish the scope of OI's authority to investigate. The bill states that the Commission cannot prevent OI from beginning an investigation, but it does not prohibit the agency from circumscribing generally what OI may investigate thus if the intent of subsections (d) and (e) is to protect the independence of the Office of Investigations, the bill may not, without some additions at least, accomplish that goal.

The Committee may want to consider some additional provisions which might help to better assure OI's independence. One such provision would be an amendment to the Energy Reorganization Act, which this Committee was responsible for, to make OI a statutory office reporting to the Commission. This would ensure the existence of the office as a Commission-level office.

The Committee may also want to consider setting out in the bill the scope of OI's authority to investigate. That would prevent attempts to limit the circumstances under which OI may conduct an investigation. Another useful provision would be a requirement that NRC employees refer all matters within OI's authority to OI. And, it might also be useful to require that OI formally notify the Commission of the resources it needs to carry out its mission and that the Commission formally respond to this request with notifications to the appropriate authorizing and appropriating committees of the Congress.

An alternative to amending the Energy Reorganization Act would be to make OI a part of the statutory inspector general office and to include provisions which specifically set out the scope of OI's authority to investigate.

In conclusion, Mr. Chairman, I support the concepts embodied in S. 908. An Inspector General for the NRC would enhance the agency's credibility by providing an independent watchdog. And further, the goal of subsections (d) and (e) to protect the independence of OI is a good idea, but I believe that there are some additions to the bill which may help to accomplish that goal more effectively.

Thank you.

Chairman GLENN. Thank you, very much.

We have been joined by Senator Sasser. Senator, do you have any comments before we go to questions?

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Mr. Chairman, I would just like to congratulate you this morning for holding these hearings and to explore the need for an inspector general at the Nuclear Regulatory Commission. I was pleased to be an original co-sponsor of the Inspector General bill and I think you know, Mr. Chairman, that it is my view that virtually all of our Federal agencies could function better with an inspector general.

I have a more comprehensive statement; but, in the interest of time I would ask unanimous consent that it be inserted in the record.

Chairman GLENN. It will be included in its entirety.

Senator SASSER. Thank you.

[The statement of Senator Sasser follows:]

STATEMENT OF SENATOR SASSER

Thank you, Mr. Chairman.

Mr. Chairman, I would like to congratulate you for holding this hearing today to explore the need for an inspector general at the Nuclear Regulatory Commission.

I was pleased to be an original cosponsor of the inspector general bill, because I believe it will fulfill a need within the NRC by lending credibility to that agency's damaged regulatory reputation.

Mr. Chairman, virtually all Federal agencies have inspector generals. They are the "Junk Yard Dogs," if you will, of the Federal agencies they watch over. They are the front line in the continuing effort to curb waste, fraud, and abuse at the Federal level.

I believe that the Federal agencies that have inspector generals have an extra degree of protection when it comes to having the internal controls that are needed to run an agency in an efficient and accountable manner. The inspector general and his office can do their work, unimpeded by agency pressures, to insure that a department has the highest degree possible of financial and operating integrity. It serves as an independent arm of an agency. Its sole mission is to see to it that the agency's operations are in full compliance with the spirit and the letter of the laws that it is empowered to discharge. And by its immediate access to cabinet officers and agency heads, it can be assured that its investigations will be heard at the highest possible level.

No Federal agency is perfect. There will always be mistakes and errors of judgment made when an executive agency performs its executive functions. But the redeeming value of an inspector general's office is to insure that these mistakes, errors in judgment, and the like, will not become systematic or deep-seated in nature. The inspector general exists in order to guide the agency back to the straight and narrow. It exists as a continuing check to those within an agency who would abuse its authority to seek to undercut its statutory responsibilities.

For too long, the Nuclear Regulatory Commission has functioned without an inspector general. The testimony here today will indicate that, on occasion, the internal controls at the NRC have been faulty. They have not worked. They have not functioned to improve agency performance or to stop practices that have undermined the NRC's regulatory capabilities.

The responsibility that the NRC is required to bear is enormous. And the NRC's mission is vital to the safe operation of the nuclear power industry in the United States. It is essential, therefore, that the highest standards of safety oversight be maintained.

The NRC needs the benefit or an inspector general so that it may regain public confidence in this regulatory ability. The inspector general will assure the public that the integrity of the NRC's oversight of the nuclear industry is beyond reproach.

The hearing today will reveal several examples of the incidents that lead to the decision that an inspector general was needed at the NRC.

For example, questions have been raised about the way the NRC assigns priorities in allocating its investigatory resources. Other questions have been raised concerning the efficiency of the NRC's investigations. Investigations have been too long delayed, as in the case of Three Mile Island and D.C. Cook plants. Investigations have failed to uncover basic quality assurance information, as in the cases of Diablo Canyon, Commanche Peak, Midland, and others.

In addition, questions have been raised about the independence of the NRC from the utilities it is charged with regulating. The NRC must deal with commercial utility companies at arm's length. An inspector general would police the interaction of the Commission with those it regulates, to assure that the Commission remains unbiased.

I have made the fight against Government waste and abuse my highest priority, and I believe that this bill goes far to achieve that purpose.

Thank you Mr. Chairman. I look forward to the testimony.

Mr. BERNTHAL. Mr. Chairman.

Chairman GLENN. Yes.

Mr. BERNTHAL. I wanted to make an opening comment as well, if I may.

Chairman GLENN. Certainly. Go ahead, Mr. Bernthal.

Mr. BERNTHAL. First of all, I would like to point out and recall that among the very first meetings of this Commission that I attended shortly after my appointment I was treated to the tail end of a proceeding that at least one of my colleagues has referred to which involved the then head of OIA, the Office of Inspection and Audit.

I recused myself for most of that proceeding because I had missed the bulk of the proceeding. But I must say from that time on it has been my position for 3 years at least that the establishment of an independent inspector general is not a step that I would in any way object to.

I think that the rationale for not doing that for the most part has been weak, and frankly, from my very first days on the Commission it has been my judgment that this type of thing is a headache that the Commission probably does not need, and it does not seem to end. It goes on and on, and so I have no objection to the proposal for an independent inspector general.

I do not subscribe, however, to many of the justifications and the implications that somehow the current system has been ineffective or somehow seriously flawed. In my judgment that has not been the case.

In respect to the Office of Investigations, I would just comment that I do not see a great deal of distinction in the distinctions that Commissioner Asselstine apparently intends to draw between his own position and that of the Commission. I believe that we all agreed that this particular issue would be better handled, if this Committee wishes so to handle it, by addressing it directly through the Atomic Energy Act as amended, perhaps by establishing OI within the statute as a permanent office reporting to the Commission.

And secondly, there is a certain contradiction within the terms of the bill as itself proposed. Somehow there appears to be a confusion between the responsibility to report to the Commission and yet the insistence for a type of independence for OI. Somehow that contradiction within the proposed bill dealing with OI needs to be resolved.

The final comment that I would make is simply that I have seen this Commission and its investigations and those who carry out its investigations accused of many things in my nearly four years on the Commission. Most recently and in particular I would note that we have been accused of carrying out investigations for political reasons, Mr. Chairman.

With that kind of criticism from both directions, I would suggest that there is at least the possibility that this agency may be hitting its responsibilities about where they belong, but I would appreciate the opportunity if the Chair would request us to respond to some of the statements that I understand that are going to be made by other witnesses today, and I would be pleased to remain if the Chair wishes us to do so.

Chairman GLENN. Just so you know, we will welcome comments on any of these statements by all members of the Commission. That is the reason you were all invited here today. We do not want to present a completely one-sided picture of this thing.

We have seen some of the IG offices in other agencies and other departments be very successful since they were established some years ago. All we are trying to do is make the best efficiencies and the best protection for the public health and safety that we possibly can.

Any other comments before we go on?

[No response.]

Chairman GLENN. Good. Thank you.

At recent hearings before the Committee we heard impressive testimony concerning the success of the 19 Offices of Inspector General in improving the operations of their respective Federal establishments. According to the current Inspectors General the key to this success has been their, and I quote, "independence from agency control and pressures," end of quote.

By law, a statutory inspector general has the authority to investigate potential wrongdoing even if it involves the head of the agency itself. As I mentioned in my opening statement, it appears that the NRC's Office of Inspector and Auditor does not have this necessary authority.

Commissioner Roberts, I have some questions for you on this particular subject. Let me first read from a document drafted by Mr. George White of a company called Middle South Services, Incorporated, dated June 15, 1983, which states:

> Attached is a memorandum which I have received from sources inside the Nuclear Regulatory Commission regarding Waterford Quality Assurance matters. This memo is for your information but I would hope that you would limit its distribution to protect the source within the NRC.

Are you familiar with that document? Mr. Roberts.

Mr. ROBERTS. Yes. I am looking at a copy of it.

Chairman GLENN. Fine. I understand that Mr. White is a representative of the utility that is licensed to operate the Waterford Nuclear Power Plant in Louisiana. Attached to Mr. White's document is a memorandum dated June 8, 1983, from a former Commissioner's assistant to the head of the NRC's Inspection and Enforcement Office which shows that copies went to a Mr. Chestnut in your office, as well as other Commissioners' offices.

Do you recognize the NRC memorandum attached to Mr. White's document?

Mr. ROBERTS. I do, indeed.

Chairman GLENN. The June 8, 1983 NRC memorandum states that a reporter had expressed to the NRC his concerns about new safety problems at the Waterford plant and possible collusion between regional inspectors and the licensee.

Were these serious matters for the Commissioners to consider?

Mr. ROBERTS. Well, they were potentially serious, yes, indeed.

Chairman GLENN. These documents together suggest that the copy of the NRC memorandum that ended up in the licensee's possession originated in your office. Do you know who the "source" is that is mentioned in Mr. White's document?

Mr. ROBERTS. I have absolutely no idea. I endeavored to find out if it was in fact anybody in my office, and as best as I could determine, it did not originate from my office. It obviously is a copy of a document that was in my office. I do not believe the copy was given by anyone on my staff, and certainly not by me, to anyone outside the office.

Chairman GLENN. Well, let me also read from another NRC document dated March 14, 1985 from then Chairman Palladino to Ben Hayes which directs Hayes to meet with you. Chairman Palladino wrote and I quote: "I discussed this matter with Commissioner Roberts. Since, under the Reorganization Plan of 1980, supervision of personnel within the immediate office of each member of the Commission is that Commissioner's responsibility, Commissioner Roberts believes—and I concur—that this is a matter for him to deal with. Therefore, you should discuss it with him as soon as possible. I have given Commissioner Roberts the two copies of the June 15, 1983, memorandum that you left with me," end of quote.

Did you and Chairman Palladino discuss whether this matter should be referred to the NRC's Office of Inspector and Auditor?

Mr. ROBERTS. Not to my knowledge. Not to my recollection, no. He called me up and said he had a matter that had been brought to his attention and I needed to talk to Ben Hayes about it. And I said fine, send Hayes around. I do not think we specifically discussed whether it should be referred to OIA.

Chairman GLENN. Well, does this mean that since 1980 Commissioners' offices have been off limits to the agency's Office of Inspector and Auditor?

Mr. ROBERTS. I am not sure I would understand the "off limits."

Chairman GLENN. Has this jurisdiction limitation ever been put in writing?

Mr. ROBERTS. I am not sure it exists and I do not think it is in writing.

Mr. BERNTHAL. Mr. Chairman, to my knowledge there certainly has been no such limitation, and I believe that in the materials which the Committee has at its disposal—if not certainly could be put at its disposal—there is clear evidence that in at least 1 or 2 cases that we have outlined, indeed OIA has carried out investigations of Commissioner's offices or their staff.

Chairman GLENN. Commissioner Asselstine.

Mr. ASSELSTINE. Yes, Mr. Chairman, I would agree with what Commissioner Bernthal just said. In fact, I can cite you an example. There was an OIA investigation of how certain transcripts of closed Commission meetings concerning the Diablo Canyon case were released.

I know that members of my staff and members of other Commissioner's staffs who had access to those transcripts were interviewed by the Office of Inspector and Auditor, so I think the handling of the item that you are raising with Commissioner Roberts stands in marked contrast to the handling of other matters. There have been OIA investigations of Commissioner offices and our staffs.

Chairman GLENN. Commissioner Roberts, I understand you did meet with Mr. Hayes as Chairman Palladino had requested. Is it not correct that at that meeting you asked Mr. Hayes to give you all of the copies he had of Mr. White's document as well as any notes Hayes had prepared about his meeting with Chairman Palladino?

Mr. Roberts. That is absolutely correct, and I subsequently met with every Commissioner, explained the subject as I understood it, told them precisely what I had done, and then destroyed those documents; that is correct.

And then no Commissioner with whom I met, of whom several are at this table, voiced any objection or any uncomfortableness with what I was doing.

Chairman Glenn. What was your reason for asking that all of the documents, the complete record of this be destroyed?

Mr. Roberts. I saw no reason for them to continue to exist. I certainly had not leaked those documents. I could not find anybody in my staff that would give me any thought they had.

Chairman Glenn. But was there a reason to destroy them?

Mr. Roberts. At the time I thought that was the appropriate thing to do.

Chairman Glenn. Why?

Mr. Roberts. I admit to being somewhat paranoid. I thought somebody was trying to set me up.

Chairman Glenn. Who?

Mr. Roberts. I had no idea. I would re-emphasize the fact that I told every one of the Commissioners precisely what I was doing. No one voiced any objection.

Chairman Glenn. Were those documents all destroyed at that time?

Mr. Roberts. The documents that I had were all torn up and thrown in the wastebasket.

Chairman Glenn. Well, that seems to me to be an unusual activity for a Commissioner to be taking. I think you would have to admit that that makes the whole thing very, very suspect.

Mr. Roberts. Are you saying that my actions make it appear that I leaked that document?

Chairman Glenn. What I am saying is that to deliberately call someone in who was doing an investigation, ask for all of their notes, all of their records, and all copies thereof, and deliberately destroy them cast a great deal of doubt on—to me at least—the propriety of the action of a Commissioner in that regard.

Mr. Roberts. Mr. Glenn, I think you ought to put this in context to the extent that we are talking about something—this was 2 years after the fact and the substantive issues had been addressed.

Chairman Glenn. Have you ever taken similar action on any other issue that came before you or was brought to your attention where there might be potential wrongdoing?

Mr. Roberts. Not to my recollection.

Chairman Glenn. Why did you do it in this case?

Mr. Roberts. I thought that I was being improperly and unfairly attacked by innuendo, that my office was passing out documents over the transom to a licensee, which is absolutely incorrect.

Chairman Glenn. During your investigation of this matter did you ever directly contact Mr. White of Middle South Services to ask him who his source in the NRC was?

Mr. ROBERTS. No.

Chairman GLENN. Why not?

Mr. ROBERTS. I do not have any jurisdiction over Mr. White.

Chairman GLENN. Well, if you were concerned about who was out to get you, why did you not try and find out who the source was within the NRC?

Mr. ROBERTS. I cannot give you a good answer.

Chairman GLENN. The Committee has an affidavit from Mr. White which states that on April 9, 1986, he had lunch with you and the new chairman of the Middle South Utilities company.

Do you recall going to lunch with Mr. White?

Mr. ROBERTS. No, I do not. April 9 when?

Chairman GLENN. April 9, 1986. That is a year ago today, as a matter of fact.

Mr. ROBERTS. I think I—yes, I did have lunch with him and the new chairman of Middle South. That is correct.

Chairman GLENN. Well, he swears is his affidavit that at this lunch the subject of a leaked NRC memorandum never even came up.

Did you ever question Mr. White about the leaked document?

Mr. ROBERTS. No.

Chairman GLENN. If you thought it was so important would not it have been logical to assume that you would question him about that?

Mr. ROBERTS. I thought the matter had gone away.

Chairman GLENN. Has the Office of Inspector and Auditor ever conducted an investigation into this matter?

Mr. ROBERTS. Not to my knowledge.

Chairman GLENN. Commissioner Asselstine, what are your specific concerns about the management of the Office of Inspector and Auditor? Do you have any specific examples of problem areas?

Mr. ASSELSTINE. Yes, Mr. Chairman. I can highlight my concerns and I can cite a few examples. I think you will hear some more about some of those examples during the remainder of the hearing. Basically, my concerns are the following.

First, one of my strong concerns is that within the agency itself our employees do not view the Office of Inspector and Auditor as a credible and as an independent watchdog. I mentioned briefly in my prepared statement that I had an NRC employee come to me with concerns about the performance of senior managers in the agency. Basically his concerns were that he was the subject of intimidation and harassment by his supervisors because he was trying to raise safety concerns about a plant.

I tried to encourage him to go to the Office of Inspector and Auditor. He was very reluctant to do so. He directed me to several other people who could corroborate his concerns. I talked with those people. Many of those people expressed the same kinds of concerns, and their concern simply was that OIA did not have a reputation for doing a thorough and credible job and that in the past when they have been involved with OIA reviews, they had not been satisfied that OIA had really gotten to the bottom of the problems.

I encouraged that individual to go to OIA, partly by working out an arrangement with the then acting director of that office that all of the interviews would be transcribed so that there would be a complete record of all of the interviews and of all of the concerns, and then whether the OIA report ever really got to the bottom of things or not, there would be a complete record in an independent way to ensure that all of their concerns had been identified and had been considered. All of this concerns the Comanche Peak investigation that I think you are going to hear about later on.

That is one of my concerns, that people within the agency do not feel that this group is really going to go after wrongdoing concerns, particularly when they involve senior managers of the agency.

A second concern that I have about OIA really goes to the current management of the office, and it does seem to me that if that office is going to perform effectively, then the people who are heading that office have to be above reproach, and I would have to say that in a couple of instances I do not share the confidence that I think my colleagues on the Commission have in the leadership of that office.

There was an internal investigation reviewed by the Justice Department of the director of that office, and I have to say for myself that the conclusions of that investigation leave doubts in my mind about whether the current management has that "above reproach" reputation that is really needed in this office.

Also, there have been instances in which individuals within the Office of Inspector and Auditor have told me and former Chairman Palladino of concerns about the way in which the management of OIA has directed certain audits or inspections, and in particular, there was an OIA inspection of the Office of Investigations where several people in the Office of Inspector and Auditor raised concerns about the way that that investigation was handled.

A third concern that I have about OIA has to do with their record for how aggressively they pursue the most significant questions concerning the performance of senior managers in the agency, and I think instead of attacking those kinds of questions head-on as an independent and objective IG should be doing, all too often those matters get either short shrift or are not addressed and instead other less significant matters are the focus of the OIA review.

I think the Comanche Peak investigation is a good recent example of that. To me, the most significant issues concerning Comanche Peak have to do with the safety attitudes and management attitudes of our Region IV regional office and whether that office or some members of that office have a bias in favor of the industry and are not interested in pursuing aggressively quality assurance concerns and safety concerns that are raised by our inspectors.

Those issues received relatively brief, if any, treatment in the OIA report. Instead the OIA report focuses on other issues that really, in my view, are considerably less significant and do not go to the heart of the performance of that office. And again, I think from the statement that I read last night, you are going to hear a great deal more about that later on from the individual who actually conducted that investigation.

And finally, my concern is that the Office of Inspector and Auditor does not always employ, in my view, the best investigative techniques. There have been instances over the past few years in which

I think people with relevant information have not been interviewed by OIA in the course of an investigation.

I would point, for example, to the investigation of the conversations between our Executive Director for Operations, the telephone conversation between him and Steve White, the Director of Nuclear Power at TVA, where Mr. White was never even interviewed. And I would also point to the Comanche Peak investigation where I have been told by the people who identified concerns that they identified individuals who had concerns and who could support their concerns and who were never interviewed.

So those are my principal concerns about the current performance of OIA. I think all of those concerns could be addressed, and certainly the performance could be improved upon, by a statutory inspector general.

Chairman GLENN. Thank you very much.

Senator Trible?

Senator TRIBLE. Mr. Chairman, I am sorry for my late arrival. I would tell our witnesses this is a usual day in the life of the Senate. I have three hearings all taking place at the same time and I am sure my colleagues are in the same situation.

Mr. Chairman, I applaud your legislative initiative here and I am pleased to join you in co-sponsoring Senate Bill 908.

I will not ask these witnesses questions because I did not hear their testimony. But I will review their testimony in the record, and I thank you for your attendance here today.

Chairman GLENN. Thank you.

Senator TRIBLE. Mr. Chairman, before I yield, however, let me ask permission to insert in the record at this time a statement from Senator Roth.

Chairman GLENN. It will be included in the record, as will other statements of Senators who are unable to attend here this morning.

[The statement of Senator Roth follows:]

OPENING STATEMENT OF SENATOR ROTH

Last Friday, I was pleased to join our Chairman and all of our colleagues on this Committee in introducing S. 908, the Inspector General Act Amendments of 1987. I want to congratulate and thank you, Mr. Chairman, for making this legislation a high priority and commencing with the hearing on the bill today.

The introduction of S. 908 is a continuation of congressional efforts since the enactment of the Inspector General Act of 1978 to expand and improve the inspector general concept throughout the government. I am pleased to say that during my tenure as Chairman of this Committee an IG was established at the Defense Department and we began efforts to provide IG-like authorities and protections at smaller Federal agencies.

Establishment of an Inspector General at the Nuclear Regulatory Commission is an idea whose time has come. S. 908 incorporates the provisions of S. 2005, which passed the Senate last October, and which would have extended the protections and authorities of the Inspector General Act to many of the smaller agencies of the Federal government, including the Nuclear Regulatory Commission. And, GAO recently reiterated its 1981 recommendation that Congress consider establishing a statutory inspector general at the NRC.

The Congress should be pleased with the accomplishments of our inspectors general in protecting the integrity of the operations of Federal agencies. But, our IGs cannot and should not be expected to eliminate all controversy over the conduct of federal programs. Inspectors General are properly separated from program responsibilities and thus should not be expected to resolve what are essentially policy differences within agencies or between agencies and those in the private sector which they serve or regulate.

Law enforcement policy, for example, is a program responsibility from which, as with other agency program responsibilities, we have tried to keep the Inspectors General separated. That principle of separation is carried over in S. 908 by providing that program enforcement units such as the NRC's Office of Investigations and certain units at the law enforcement bureaus of the Treasury Department are not folded into the Offices of Inspector General to be established by this bill.

S. 908 also addresses the issue of the need for inspector general-like independence for the Office of Investigations at the NRC. This is an issue perhaps beyond our responsibilities with respect to inspectors general. But, it is one that is fair for us to explore, so long as we do it carefully, not only with respect to this agency but also in terms of the ramifications a decision here may have with respect to similar units at other agencies.

I welcome all of our witnesses today and thank them for their contributions to the work of the Committee not only today but as we move forward with this legislation.

Chairman GLENN. Thank you. Senator Levin and Senator Chiles have also submitted statements for the record which we will include at this time.

[The statements of Senator Levin and Senator Chiles follow:]

OPENING STATEMENT OF SENATOR LEVIN

Mr. Chairman, I commend you for taking the initiative to hold this hearing today and to explore the need for an Inspector General at the Nuclear Regulatory Commission. I support that effort.

Few issues are of as much concern to the general public as the safety of our nuclear reactors. Our awareness of the potential for disaster when something goes wrong at one of these plants has been dramatically heightened since Chernobyl.

If we are to use the nuclear power plants we have as one of the answers to our energy needs, we have to be as certain as the human condition permits, that we are doing everything we can to ensure the safety of the operation of these generating plants. One important ingredient—critically important ingredient—is the diligence and integrity of the entity we have established to monitor nuclear power plant operations—the NRC. And one way to monitor and to help ensure the NRC's proper conduct is to install an independent Inspector General.

Such as individual should not be viewed as a threat, but should be welcomed as an ally in the proper conduct of the agency.

I will support legislation to create a statutory Inspector General, and, again, I commend Senator Glenn for bringing this important issue to the attention of the committee.

OPENING STATEMENT OF SENATOR CHILES

Mr. Chairman, first of all I wish to commend you for holding these hearings.

The Committee has reason to believe that the enforcement offices within the NRC have been unable or unwilling to carry out their responsibilities in policing the activities of the NRC. I believe that the absence of an independent inspector has had a lot to do with this problem. Whenever an individual is asked to investigate someone to whom he must later answer, the risk that his work may be compromised exists. We cannot afford to have any wrongdoing, shielding of such wrongdoing, or anything of this kind. The nuclear industry is too fragile to risk it, and besides that, it's wrong.

There exists plentiful evidence that the 19 Inspectors General already in place have been effective in curbing fraud and abuse in their respective departments and agencies. It seems that the NRC has had some trouble keeping its house in order, and I support the concept of an IG in this agency to help them along. I am a cosponsor of S. 908, a bill that would install a statutory Inspector General in the NRC, as well as the Department of the Treasury, the Federal Emergency Management Agency, and the Office of Personnel Management.

The Inspector General would report to the Congress as well as to the Chairman of the Commission. He would be able to make observations and recommendations that would not be subject to editing by anyone in the NRC.

The Inspector could only be removed by the President. This shield against pressure applied by the Commission further ensures that the Inspector would perform his work in a completely objective manner. The Congress, and therefore the American people will gain a much clearer picture of what, if any, abuses are occurring within the Commission.

I believe that problems exist with both offices within the NRC that are responsible for being watchdogs. The OIA, the Office of Inspector and Auditor, was established in 1975 to act as an objective investigator within the NRC, and is accountable to the Commission. In 1982, the Office of Investigations was created, mainly as a response to concerns over possible violations that the OIA was having trouble handling, especially with regards to external problems. This office also is accountable to the Commission.

If an independent Inspector General's office is to be created, OIA would be incorporated into that office. Internal audits and investigations of mismanagement could then be conducted in a more objective manner, one which would ensure that the results would not be affected by the boss looking over your shoulder, or worse, applying pressure that the audit not take place at all.

The creation of an IG would not supersede the importance of the Office of Investigations. OI presently is accountable to the Commission, and that situation should not change. OI's investigations of violations by external actors, as opposed to the NRC itself, should not be compromised. It must strengthen its relationship with the Department of Justice, so that infractions by licensees and applicants are pursued with the greatest vigor.

It seems that the NRC has had trouble both internally and externally. The lack of an independent inspector has hampered investigations of wrongdoing within the Commission. Undue restrictions on investigations of licensees and applicants also limits the effectiveness of the Commission's investigators. Both of these unfortunate situations impact negatively on NRC's duties as regulator of health and safety in the commercial nuclear industry.

I think it is clear that an independent statutory Inspector General is badly needed at the NRC. If the Commission is performing its duties in an honest and correct manner, it will have no problem with the IG. However, if there are internal or external violations, and it is clear that there have been instances of such violations, then the Congress and the public need to know about them. The best way to find out is from an independent investigator.

Chairman GLENN. Commissioner Asselstine, last year there was a controversy concerning the current director of OIA and her review of personnel and security files. I know you had some involvement with that. During that controversy you and then Chairman Palladino met with OIA employees.

I think you have already commented on some of this. I will not ask you more about that, except this: Did Ms. Connelly subsequently file a grievance against you because you spoke out about these problems?

Mr. ASSELSTINE. That is correct, Mr. Chairman.

Chairman GLENN. And that grievance was dismissed?

Mr. ASSELSTINE. That is correct.

Chairman GLENN. We turn to another subject. You testified that you support efforts to protect the independence of the Office of Investigations. When the Executive Director for Operations recommended the establishment of an Investigation Review Board you wrote in a September 1986 memorandum:

> My main concern is that it appears to be a thinly veiled attempt by the EDO to control OI by controlling what referrals are made and thus what OI investigates.

What impact has the IRB had on the Office of Investigations and have there been any other instances of Commission actions which have limited OI's effectiveness?

Mr. ASSELSTINE. Mr. Chairman, I understand that the Investigation Referral Board has had a fairly dramatic impact on the number of referrals made to OI. That is precisely the kind of result that I feared when the Commission established the Investigation Referral Board.

I know Mr. Hayes is going to talk about that later, but from what I saw of his statement, it appears that the number of investigations—or the number of allegations referred to our Office of Investigations has dropped by 5 times over the past 6 months since the Investigation Referral Board has been in operation.

I find it hard to believe that there has been a precipitous drop in the number of concerns or problems that are occurring out there and I suspect that this is a direct result of the kind of chilling effect that comes from the Investigation Referral Board.

In my view, there was no justification for the Investigation Referral Board. When it was first proposed I raised this issue with Chairman Zech. He urged me to call the Executive Director for Operations and talk to him about it to understand what Mr. Stello's justification was for the IRB. I called Mr. Stello and we talked about it at length, and I have to say that his conversation with me disturbed me even more about what this was all really about.

In my view the system that existed before the Investigation Referral Board was adopted worked very well. If there were questions of wrongdoing, those were referred to the Office of Investigations. The Office of Investigations had the opportunity to look at them to decide whether an investigation really was necessary or not. If it was a case in which an investigation was not necessary, then our Office of Investigations could simply notify the staff that they did not see a problem or a basis for investigation.

Also, I thought that there was plenty of opportunity if the staff felt that there was a certain investigation that needed more attention or had to be resolved faster than others, had a higher priority, all they had to do was simply tell our Office of Investigations that and get on with the job.

Mr. Stello was not able to identify to me lists of investigations that he thought had been referred to OI but that were inappropriate or improper investigations, nor was he able to respond to my answer that basically there just did not seem to be a problem here, even in terms of setting priorities.

The Commission, unfortunately, despite my reservations, went ahead and put into place the Investigation Referral Board, and I think that we ought to be quite concerned about the consequences of that action. One of the concerns that led to the establishment of an Office of Investigations back in 1982 was that prior to that time investigations were done by the technical staff and they simply were not done right.

We faced a whole series of problems. People were not trained investigators that were doing the work. They were not asking the right questions. We would get reports that left the key issues unaddressed. Improper investigative techniques were used. The proper documents were not gathered and were not protected, and in some instances, drafts of reports were actually given to the people under investigation for their review.

All of those problems led the Commission to conclude in 1982 that we needed a group of professional investigators to do this work and to do it right. My own view is the Office of Investigations has performed that task extraordinarily well. The kinds of complaints and concerns we had before 1982 about the quality of investigations have just disappeared and I am very concerned that this Investigation Referral Board is moving back to the days before 1982.

Mr. ZECH. Mr. Chairman, may I respond to that?

Chairman GLENN. Certainly, Mr. Chairman.

Mr. ZECH. The Investigation Review Board, in my judgment, is very responsible management action on our part. I think it is clear to all of us on the Commission that the Office of Investigations, although we respect the fact that it has a very difficult job, has had a backlog of cases. It has had difficulty in prioritizing cases and in setting a threshold for investigations.

It seems to me and to the majority of my colleagues that it would be a responsible action on our part to ensure, in order to carry out our mission for public health and safety, that the Office of Investigations was indeed giving the priority, to those investigations that seemed to have the most immediate impact on public health and safety.

It has been my impression that this sorting out this task was not appropriate to be left to the Office of Investigations we believe that in carrying out our mission of public health and safety, we—the Commissioners—should give the Executive Director for Operations the guidance that he needed because—he is the one that requests the investigations from the Office of Investigations.

The requests to Office of Investigations come from the staff. Therefore, it seems to me that the Investigations Referral Board was only an effort on our part to ensure that the staff disciplined itself in deciding which investigations should be requested. Before that, we had a system of, in my view, rather undisciplined requests to Office of Investigations that was rather, in some cases, overwhelming OI and causing backlogs.

It was important, in my view, that we focus on safety. That is our job, and if we were not being careful, it seemed to me and the majority of my colleagues, that we might be overwhelming the Office of Investigation and not giving OI the proper guidance necessary.

So I think the purpose—certainly our intent—for the Investigation Review Board was to ensure that the most important investigations were requested and the Office of Investigation was indeed being served better by the Commission and the staff in sorting out what we thought were the priorities for safety in carrying out our mission.

That was the intent of the Board. It has not been in effect very long. As I recall we put it into effect for a 6 month trial period. If my memory serves me correctly, that period is going to be up in a week or so. So we will evaluate at that time whether the Board seems to have served us well or not.

[The following information was subsequently submitted:]

The Commission has provided the Committee with reports prepared by the Investigations Referral Board (IRB) and the Office of Investigations (OI) summarizing the activities of the Board during its existence. On June 17, 1987, NRC Chairman Zech informed the Committee that the Commission had recently received a memorandum from the Executive Director for Operations making recommendations with respect to the IRB and advising that the IRB had been terminated, effective June 5, 1987. The EDO's recommendations are under consideration by the Commission.

Mr. **Zech**. Right now I think it is a little premature, but the effort—the intent—I can assure you, Mr. Chairman, was to provide some priority and some discipline so that we could indeed carry out our safety functions like I believe the Congress and certainly the Commission believes we should.

Chairman **Glenn**. Are you aware that the caseload there has been cut by a factor of 5?

Mr. **Zech**. I understand it has been cut significantly, Mr. Chairman, and I am not sure of those numbers. I could supply those for the record, but I am told that they may not be accurate. I certainly would prefer, with your permission, to give you a better number. I am not at all sure that that is the right number.

Chairman **Glenn**. Well, we would appreciate having it. I believe later testimony today will indicate referrals have been cut by a factor of 5.

I do not see how the IRB can do anything but cut the independence of the OI.

Mr. **Zech**. No, sir. To me it—it is fundamental, I believe, Mr. Chairman, at least in my belief, to recognize that OI's primary job is to serve this Commission; that is, to help us determine which are the very important safety factors.

Should we allow a plant to be operating or not? It is very important that we make that determination up front. After that determination of safety is made, there is no interference on the part of the Commission with the conduct of further investigation, whether it might be civil or criminal.

We, in my judgment, have not interfered with the investigations at all. But it is awfully important—at least it seems to me important—that we make a determination, is there a real significant safety factor here involved or not? Are we protecting the public health and safety?

In that way, Mr. Chairman, OI can serve the Commission properly and responsibly. And that is all we are trying to do.

Chairman **Glenn**. Well, I think subsequent testimony this morning will indicate that the way you talk about it here has not always been the case. That is one reason I wanted the other people to go first this morning, so the Commissioners would all have a chance to comment on their testimony directly.

You requested otherwise. I was glad to go along with whatever you wanted on that particular issue. I did not feel that strongly about it. But I think it indicates why maybe my original judgment was correct, that we should have had this in a little different order this morning.

If OI has too great a load why not give them additional resources to do the job that they have to do?

Mr. **Zech**. Well, they have asked for additional resources, Mr. Chairman. They have asked for different resources in the past. Frankly, it has been my judgment, personally, that until they could prioritize themselves and establish thresholds that set up a priority-type system for their investigations—which was the intent of the Investigation Review Board, to serve that purpose—until we could really sort out whether they did indeed need more resources or not, we simply were not in a good position to make that determination.

But I would like to point out just one more thought, Mr. Chairman. Again, this is a trial period that we are undergoing now and we will review it. And if it is concluded that we are in any way impacting on our safety mission, I can assure you we will change it. We will have to review it here very soon.

Chairman GLENN. Okay. Commissioner Carr, we have not heard from you yet.

Mr. CARR. As a novice in this organization when I got here, we had a lot of work to do. One of OI's responsibilities, the primary one in my view, is to help us do that work, to make sure we do not license somebody that should not be licensed, that if we enforce an action against somebody it is adequately investigated. And I agree with the reason for setting them up. We needed good investigators to substantiate that.

As far as their workload goes, they currently have over 100 outstanding cases, of which 50 are over a year old. So it is obvious to me that they have plenty of workload to get their work done. The IRB was set up to assist us in focusing on those cases which are most important to make sure that our licensing and our enforcement action was done.

And so I think it is a proper management tool. I agree with the Chairman. It is our prerogative to tell them what to investigate to help us get our work done.

Mr. BERNTHAL. Mr. Chairman?

Chairman GLENN. Yes, Mr. Bernthal.

Mr. BERNTHAL. If I could make a brief comment. It is important, I think, that we focus on the right numbers here, and the question should not be how many referrals we have had to OI since the establishment of this board. What matters and the question is, how many new cases have been opened by OI. And in fact, there has already been some confusion in the various comments in the progress of discussing this issue here today.

Many of the allegations that had been referred to OI previously, I presume, were never pursued by OI, so we really should be looking here, if were are going to compare apples with apples, at the number of cases, the caseload of OI before and after the establishment of that board; not the number of allegations that had been reviewed.

The only other comment I would make on the board itself is that I have consistently said from the beginning that the board as an advisory body for referrals would be very useful if and only if coupled with a clear understanding throughout the agency that any employee of this agency, any member of the Commission, and indeed any member of the public, may refer a matter to the Office of Investigations for an investigatory activity.

To the extent that that impression and that that understanding is not clear throughout the agency, then it seems to me we need to make it clear. But under those circumstances then I think the board performs a useful service.

Chairman GLENN. Mr. Asselstine.

Mr. ASSELSTINE. Mr. Chairman, I think that you need to look at a couple of things. One is the number of referrals, because that indicates how many times the staff is turning up items that they believe should be investigated by OI. And I think it is an interesting comparison to look before this investigation referral board went into effect and the dramatic drop in the number of referrals.

I think it is also useful to look at the actual experience since the Investigation Referral Board was put in place concerning OI's ability to initiate investigations on their own. I think what you may find is that the Office of Investigations, because these items are not being brought to their attention by the staff or being referred by the staff, is having to raise these issues on their own initiative, and I think if you look at a few good examples that Mr. Hayes is going to talk about later, what you will also find is that OI then has been criticized by at least one member of the Commission for initiating those investigations on their own.

I would suggest that you look at the Milford Hospital case as a good example of how this process is working, because it looks to me, based upon what we have heard thus far, both from Commissioner Roberts and from our Office of Investigations, that that is an instance in which the Investigation Referral Board is actually having a very negative effect.

What you are seeing is, again, the old ways of the technical staff trying to do investigations using questionable investigative techniques, tipping off a licensee about an investigation or a matter that really should be investigated by the professional investigators. The Office of Investigations is then having to initiate an investigation on their own to do the job right because the matter is not referred to them for investigation, and then a Commissioner jumping in and criticizing the Office of Investigations for what they have done.

I think that that is a good example of how the Investigation Referral Board is working in a very negative way. I do not doubt for a minute what the Chairman said. He is a decent and honorable guy and I know that he put this into place with the intention that it would be a sound and effective management tool. My point is that it is not working that way and it is working to have a very negative effect on the independence of the Office of Investigations.

On the backlog question, my view on that is, if you want to deal with the backlog of investigations, first you determine how many of those investigations really need to be done, are they legitimate wrongdoing issues, and second you give the Office of Investigations the resources it needs to do the job.

They have consistently, over the past several years asked for additional resources. I have supported that. My colleagues on the Commission in some instances have not supported their requests, or at least all of their requests.

The consequence is that they do not have the people to devote to some of those investigations that have been languishing a long time, and the fact is, significant items come up all the time and the Commission and the staff are always telling the Office of Investigations, "this is a critical item, you have to do this first, get on this one right away," and they are always chasing a large number of significant items with limited resources.

Chairman GLENN. There have been several actions of the Commission, Mr. Chairman and members, that viewed at least from outside the Commission would indicate that you have moved the

Office of Investigations into a lesser position or put more controls over it.

Let me just cite a few of these here. You have moved OI under the Executive Director for Operations.

Mr. Zech. Mr. Chairman, we have not done that.

Chairman Glenn. OK. That was an error, you have limited OI's initiating investigations, you have put the threshold limitations in, and you have put the Investigation Review Board in. You have limited their referrals of potential criminal cases to the Department of Justice.

Instead of making OI more independent and a more powerful organization, instead of moving it up into a more important position, you apparently are putting more controls over it and making it less able to do the job.

The Department of Justice wrote you a letter and the Department of Justice said, "Prior to and since the creation of OI there has been some opposition as well as resistance within the NRC to the detection and disclosure of deliberate wrongdoing by NRC licensees." And the Department also wrote that, "Senior personnel within the NRC may have contributed to this problem."

That is not this Committee's staff. That is the Administration's own Department of Justice commenting on how OI has been treated.

I know we will have Mr. Hayes' testimony later, but he feels that the threshold limitations for NRC staff to consider before referring cases to OI is too high. It requires the staff to interpret a licensee's intent, an inquiry more appropriate for OI investigations

Now, all of these together have the effect of downgrading the Office of Investigations at a time when perhaps it needs strengthening and more independence, and that is what we have tried to do by extending to it certain aspects of the IG concept.

Mr. Zech. If I just may say, Mr. Chairman, I do not believe we have, to my knowledge, anyway, ever stopped a referral to the Department of Justice that OI has thought we should make. I do believe that I can say we are trying to place the Office of Investigation in an important role in our organization and we are trying to make sure that they serve this agency and serve our mission.

That is why we are trying to help them with priorities and with thresholds and a review process. We are trying to help them manage themselves so that they can indeed contribute to our mission. That is very important, Mr. Chairman, and it seems to me that there is no intent to downgrade their importance at all. It is important to help them manage themselves better so they can better serve the Commission.

Chairman Glenn. Does anyone else have a comment? Mr. Carr.

Mr. Carr. I think there is some misunderstanding that OI's primary purpose is criminal investigation. That is not their purpose. Their purpose is to help us do our job.

Chairman Glenn. Well, we certainly do not eliminate criminal investigation from their mandate, do we?

Mr. Carr. I concur. When they find it out it should be referred to the Department of Justice. The FBI can do the investigation.

Chairman GLENN. That is where the Department of Justice even says that OI has been downgraded somewhat, or words to that effect.

Mr. ZECH. I think, Mr. Chairman, it would be fair to say that—I know you are referring to a statement that they made some time ago—but I would like to think that frankly I think our relations with the Department of Justice are excellent. They have improved considerably, I would like to think, over the past year or so.

I really do believe that we have—I know we have—ongoing communication with the Department of Justice that, as far as I am concerned, is strong and proper. I like to think that we have improved considerably. I have no reason to believe that the Department of Justice feels otherwise.

I can assure that we intend to do what is proper as regards our relationship with the Department of Justice. I think our relationship has improved considerably and I think it could be termed excellent at the moment.

Chairman GLENN. I do not want to repeat myself over and over but with regard to moving OI under the EDO office, Justice commented on that in a March 1985 letter in which the Department said that such a move would, quote, "undermine OI's independence."

Mr. ZECH. But we never did that, Mr. Chairman. We did not move them under the Executive Director for Operations. Let me just say this, when I first came to the Commission almost 3 years ago——

Chairman GLENN. That was the intent, though. That is what was trying to be done at that time.

Mr. ZECH. No, sir. There was no official move. There has been consideration from time to time to do just that, unofficially, informally. But frankly, Mr. Chairman, it was my view when I first came to the Commission one of the first thing I heard about was how OI needed so many resources and so forth.

It looked to me like it was not a matter of necessarily additional resources but better management. It was an attempt, you know, to say okay, all of their requests for investigation come from the staff, then perhaps should not the staff supervise them? Should not the staff have some responsibility? That is what this referral board resulted in later.

Chairman GLENN. All our legislation would do is make sure that OI stays where it is and that it is independent and can do the job and has the resources. It is very simple and straightforward and I would think everyone of you would be welcoming that.

Mr. ZECH. Well, that is where it is, Mr. Chairman.

Chairman GLENN. I do not understand why anybody would fight it.

Mr. ZECH. Well, the point is it is already there.

Chairman GLENN. We had a similar situation years ago with the first group of inspectors general. We had every agency of Government before, they were predicting all sorts of dire, gloomy consequences if we put some sort of investigative unit in. Now those agencies sing their praises, by and large, across the Government.

Inspectors general have saved us a lot of money. They have helped out in management organization because of their independence.

Rather than fighting, I think you would all be blessed well-advised to get everybody board and let's make the thing work and stop any doubts about the Commission.

Mr. Zech. Well, if I may, Mr. Chairman. If I may back off just a moment.

Chairman Glenn. And support it. [Laughter.]

Mr. Zech. No. I wish I could, but I do not think it is necessary. It is not that it is so bad a bill, Mr. Chairman, I just do not think it is——

Chairman Glenn. Would you repeat that?

Mr. Zech. I just do not think it is necessary. Let me just say this. I have worked with inspector generals a good part of my life, as I know you have, Mr. Chairman, and I certainly have great respect for their need and their value and so forth.

But, you know, on this Commission it has been my experience in these past almost 3 years that we really do have an awful lot of good people. We have very fine people with a lot of integrity.

They do have different professional opinions. They do have different judgments. They do have different ways of looking at things. But in general I am awfully impressed that this agency is composed of dedicated people, dedicated to their country, dedicated to safety. And OIA, I think, has a very difficult job. She is the inspector general, in a sense, for our agency. She takes on tremendously important tasks and I think she does them in a superb manner.

OI has a very tough job. He and his organization are continually involved in matters that might involve criminality, might involve intent to deceive. They did, in my view, a splendid job in this recent problem we have had at Peach Bottom where OI participated in a very fast way to assist the staff in making a decision that allowed that plant to be shut down, which was a proper decision in my judgment. So OI has a very important job in our agency.

Chairman Glenn. I do not want to make an inspector general office into a petty complaint board, either, a gripe board where someone does not get promoted for good reasons—he just was not competent and then goes and makes some gripe and there is an investigation or whatever. I do not want to make it into that kind of a board at all.

But there are questions about the NRC's relationship with licensees, and whether the relationship is too cozy. For example, there is a question whether these documents leaked out of Mr. Roberts' office or his assistant or from parties as yet unknown.

But I know that your agency, the Nuclear Regulatory Commission, is charged with overseeing the licensees without giving any favor, and when the relationships start getting too cozy, and documents are leaked, and somebody is protecting his source in the NRC, we have got to raise some questions.

That is what I am doing. We are trying to organize the NRC to make it so that in the future the public will know that health and safety is being served first, and that we do not have some little cozy relationship with industry. We do not have leaked information that lets licensees know in advance what is going on so they can take protective measures to protect their dollar value even as the public health and safety may be endangered.

That is basically what we are after here. That was not a question to the Commissioners. That is just a statement and my time is up.

Senator Heinz, it is your turn.

OPENING STATEMENT OF SENATOR HEINZ

Senator Heinz. Mr. Chairman, thank you very much. Let me say at the outset that we all know there are two investigative offices at the NRC. The first is the Office of Inspector and Auditor, the internal function, and the second is the Office of Investigations. It conducts oversight of licenses.

The reason we have the latter is, as I recollect, a direct result of Three Mile Island where it became clear that the investigations into TMI were utterly inadequate. Everybody understands that. They may not agree with it, but that was the conclusion that Congress and the President came to.

Even though the NRC had 3 years to bring serious problems to light, the job was not done and as a result criminal probes had to be undertaken outside the NRC and here we are 8 years later and even though we have an Office of Investigations at NRC, to the best of my knowledge the NRC has never come to a conclusion about what ought to be done with those responsible for Three Mile Island.

Mr. Zech. May I respond, Senator?

Senator Heinz. Not yet. I have got some questions.

Mr. Zech. Fine.

Senator Heinz. Now, in an unrelated matter, in the last 10 days the Commission has taken action on Peach Bottom, putting it into cold shutdown following findings that control room operators were sleeping on the job.

You may have taken the right action in that case, but I would like to know and I will ask you about what standards of accountability you are now applying, and whether you intend to apply them uniformly in the future, or in the alternative, is this just a flash in the pan in anticipation of this or other hearings? Are you just getting tough to kind of impress us that you have not been, like the Peach Bottom control operators, asleep at the switch for 8 years. I do not know how we can solve the problems that we appear to have without the legislation that we are having a hearing on today, S. 908.

I am particularly concerned about the testimony that we will hear later today from Mr. Greenspun, a 15 year veteran of, among other things, the Justice Department, which is most distressing and quite damning.

But let me ask my first question, which has to do with NRC policy with regard to reactor control room safety. I mentioned what you did at Peach Bottom where reactor number 3 was put into cold shutdown after those control room personnel were found to be literally sleeping on the job.

My question is this: When will the NRC release the information it has on Peach Bottom? When we will get the names of who is responsible and what you judge to have been the failures; the system failures, the failure of the internal audit function that every corporation is supposed to ask, and the rest of the specifics that we need in order to understand how it is you are going about your job, at least now, if not 8 years ago on Three Mile Island?

Who would like to take a crack at that?

Mr. ZECH. Well, I would like to start first, if I may. First, with all due respect, Senator, I resent the implication that we shut Peach Bottom down just to impress this Committee. I can assure you that is not the case.

Senator HEINZ. Have you ever ordered a reactor into cold shutdown like that before?

Mr. ZECH. Not since I have been here on this Commission.

Mr. ROBERTS. I think the Commission did, before my time also, but sometime in 1979.

Senator HEINZ. That is precisely the point. The point is that there have been a lot of violations of safety at reactors while any number of you have been on the Commission. This is the first time a reactor, although the reactor itself was operating safely, although there were not cracks, although there were no structural defects, this is the first time you have ever, for a management systems violation, as long as any of you have been on the Commission, taken the very severe step of putting a reactor into cold shutdown and forcing the utility to cope with the difficulties of being in cold shutdown, which are not inconsiderable, you should know.

Mr. ZECH. Senator, we have--I am not sure of the exact number—but we have, I think, about eight other plants in the country now that are shut down.

Senator HEINZ. For this kind of problem?

Mr. ZECH. Not for sleeping on watch, but for some part of not carrying out our regulations, not necessarily caused by a significant event. But we will shut a reactor down if we think that it is proper to do so. And I hope you are not implying that we did the wrong thing at Peach Bottom, because I think we did the right thing.

Senator HEINZ. I have not said anything that should cause you to reach the conclusion that I think you did the wrong thing. What I have wondered about and what I have asked you a question about is whether you have ever placed any of the—when I say you, I mean you and the current members of your Commission—have ever placed a reactor in cold shutdown because you judged the people part of the operation to be substandard? Jim?

Mr. ASSELSTINE. Senator Heinz, I think that there have been some instances like that, or where, at least, that result was accomplished through some behind the scenes arm twisting. I think the one example I would point to are the Brown's Ferry plants, the TVA plants in Alabama. We saw a series of operating problems at those plants in early, I think, 1985 that really raised concerns about the people side of things, whether people knew what they were doing, whether they understood their procedures, whether they had a handle on the design of the plant, whether they knew how to maintain equipment, and those plants were shut down.

Now, TVA did it voluntarily, but I think that as a practical matter, if they had not agreed to shut those plants down on their own, the Commission probably, or the staff, would have stepped in and shut them down.

Senator **Heinz**. But this is the first time—you may have gotten the result, like you say, and I am glad—that is important information—I am glad you put that out. But my understanding is correct, though, this is the first time you have been forced to order a shutdown for people reasons.

I know you have ordered shutdowns for other mechanical and——

Mr. **Zech**. That is not quite correct, Senator. What is correct, I think, would be to say that we have some plants shut down and we have ordered plants shut down that have had management problems as well as hardware problems. We have not had people, to my knowledge, sleeping in the control room before, but we have had management problems combined with other problems that gave us a lot——

Senator **Heinz**. But I am just asking—I want to be clear on my question, Mr. Zech, which is, this is the first time a plant has ever been ordered into cold shutdown, at least in the experience of this group of Commissioners, solely for people problems—solely for people problems.

Mr. **Zech**. I think that is probably correct.

Senator **Heinz**. I am not trying to prove a Federal case against you guys. I am just trying to get some facts.

Mr. **Asselstine**. I think it is, Senator, correct that this is the first time where we have issued an order and by issuing the order we have shut them down for that reason.

Senator **Heinz**. All right.

Mr. **Asselstine**. If I could add one other comment, though, on that.

Senator **Heinz**. Yes, sure.

Mr. **Asselstine**. I think that there has been—it is fair to say that there has been an evolution, or there is an evolution in the way that we are approaching these kinds of problems, management problems and the people problems.

It used to be we would wait for serious operating events to occur, for something really to go wrong, and then we would step in and say, hey, here is the problem, you have got to get it fixed and you cannot start the plant back up until you do.

There has been an effort, I think, over the past couple of years to begin to move more into the direction of saying, lets find these problems before something serious happens, and if we find something serious, lets deal with it strongly and effectively.

Senator **Heinz**. There may well be, and the purpose of my next question is aimed at that. My next question is this: Does this mean that in the future when you detect serious people problems that you will order reactors into cold shutdown?

Mr. **Zech**. If we lose confidence in the management—people problems that you are referring to—as far as I am concerned we will certainly shut them down.

Senator **Heinz**. How long has the NRC known about the sleeping on the job at Peach Bottom?

Mr. **Zech**. Well, it is being investigated now, Senator. I just would have to say that it has come up, we heard about it, we were told that it has been going on for a period of time. I don't know, specifically. I would have to ask for assistance on that.

Senator HEINZ. Go ahead and ask.

Mr. ZECH. Well, Commissioner Roberts—I was out of the country when it actually was shut down, and so I will ask Commissioner Roberts, who was acting Chairman when it was shut down, to respond.

Senator HEINZ. Mr. Roberts?

Mr. ROBERTS. The Chairman was out of the country and I was the acting Chairman. I do not even think we had a quorum of Commissioners. People were either on leave or travel. I was called by the Executive Director of Operations one afternoon and he said, we have got some problems at a specific plant. I do not know all the details, but I think I have got to shut them down.

He has that authority if he sees it as a safety call, and I said, Vic, I do not know all the details, give me as much as you know, it is your call, if you think this is a public health and safety matter close them down. And that is precisely what happened.

To answer your question, the information was developed over a period of days and a weekend. Other than that, I know no more specifics at this time. Before it is over we will know lots of specifics, but we just do not have them at this time.

Mr. CARR. I knew about it the night before it was shut down and I said shut it down.

Mr. ASSELSTINE. So did I.

Mr. BERNTHAL. So did I.

Senator HEINZ. Was anybody against shutting it down?

Mr. ZECH. No.

Senator HEINZ. The Chairman was out of the country.

Mr. ZECH. I support it fully. We did the right thing.

Mr. ROBERTS. But this was done by telephone. We did not have a meeting. People were out of pocket.

Senator HEINZ. If I might just finish this line of inquiry, because my time has expired, if I may, Mr. Chairman.

The shutdown took place roughly within the last 2 weeks. That was the result of an audit, in effect, that had taken place there immediately prior to that. My question, however, was not aimed at second guessing the judgments that you or your staff made.

My question was, when did the NRC first know that people were asleep at the job as opposed to when did you determine that there was a total failure of management systems in checking up on whether or not people were asleep at the job.

Mr. ZECH. On March 24, 1987, our Region I received information that the control room operators at Peach Bottom had been observed sleeping while on duty in the control room and were otherwise inattentive to their licenses obligation, March 24.

Senator HEINZ. So the testimony of the NRC before this Committee of Congress is that the first time the NRC or its staff learned of sleeping on the job at Peach Bottom was March 24?

Mr. ZECH. I am not sure of that. I am telling you what——

Senator HEINZ. Well, that is my question.

Mr. ZECH. I am telling you what I have been told, Senator. Now, if there is anybody——

Senator HEINZ. Well, all I am trying to do is get a fact on the record before a Committee of Congress.

Mr. ZECH. Yes. I am telling you what I know, and if you are asking if there is any individual in NRC or anywhere else that knew of this ahead of time, I would have to say I do not know.

Senator HEINZ. I am not saying any place else. I am saying NRC.

Mr. ZECH. Well, as far as I am concerned it was March 24, but there may have been others that I would have to look into.

Mr. CARR. We should wait until the investigation, Senator Heinz.

Senator HEINZ. I disagree strongly with that. The fact that credible information came to your attention on a specific date is information that does not prejudice anything anywhere. If you cannot tell us when you first——

Mr. CARR. I told you when it came to my attention.

Senator HEINZ. I would hate to be in the situation where someone said, you know, we cannot tell you when the accident occurred at Three Mile Island because it might prejudice a case.

Mr. CARR. I did not say that.

Senator HEINZ. Come on, fellows. You know, you either found out about something going on or you did not.

Mr. CARR. I told you exactly when I found it out. I do not know when somebody else found it out.

Senator HEINZ. That is what I am asking. Everybody back there from the NRC works for you. Turn around and ask somebody, please, when they first found out. And if someone has a date earlier than March 24 and they have not told you, we want to find out who they are and we will invite them back here separately.

Mr. ZECH. All right. We will ask the Executive Director for Operations to respond.

Mr. STELLO. Do I need to be sworn in first, Mr. Chairman?

Senator HEINZ. No, no. Just tell us the truth. [Laughter.]

Mr. STELLO. The information that we had that led to the shutdown was the information that we first came to on March 24, 1987. Your question was, was there ever any other indication of sleeping at the Peach Bottom facility. When we issued the order we identified an earlier isolated instance in which we had observed someone supposed to have been sleeping.

There were questions as to whether he really was or was not and what that all meant.

Senator HEINZ. When was that?

Mr. STELLO. Excuse me. It is in the order. If I might I will just look at the date.

It was on June 10, 1985, during the 11 to 7 p.m. shift when an NRC inspector was present and observed him on duty.

Senator HEINZ. June 10, 1985?

Mr. STELLO. That is correct, sir.

Senator HEINZ. All right. Thank you. My time has expired.

Chairman GLENN. Thank you. We are going to have to move along. We have other panels here this morning.

Let the record show that the Nuclear Regulatory Commission was in complete agreement on one thing this morning, and that is the shutdown at Peach Bottom.

Mr. **Roberts**. Mr. Chairman, could I go back to your last comment, not question. I do not disagree with anything you had to say in your comments before Senator Heinz began his questioning.

Chairman **Glenn**. What were we on just before that?

Mr. **Carr**. I think what he is saying is we agree with the substance, we are only arguing about the form.

Chairman **Glenn**. All right. Before I do move on to another panel, Mr. Roberts, I do not know whether any of your staff leaked that document to George White or not, but I do know that it took two years between the time the document was leaked and Chairman Palladino discussed it with you. And the Chairman erroneously, I think, gave you sole authority to, in effect, investigate your own office.

That may have been the custom over there, but I am not sure that it was right. The investigation was inadequate and I would suggest that an independent IG would have absolutely refused to cough up documents to be destroyed and destroy all records, of whatever happened in that case.

An independent IG would have protected against that, and I guess that a summary statement that I would have for all of you gentlemen would be, if everything is okay and operating safely there is nothing to fear from an IG. If there are things that we all should fear, then we had better have an IG as an independent oversight to give us that extra measure of assurance.

Mr. **Zech**. May I make one brief statement, Mr. Chairman.

Chairman **Glenn**. Sure.

Mr. **Zech**. My concern is it is another independent part of our organization. Frankly, this is an independent agency. We have so much independence that, as the Chairman, I can tell you my greatest challenge is to try to get all of these independent groups together focusing on our mission.

We have five Commissioners—five independent Commissioners as you can see this morning—we have an ACRS, Advisory Committee on Reactor Safeguards, we have OIA and OI that we have discussed, with certainly considerable independence.

Chairman **Glenn**. Well, I would not go along that there is adequate independence. Not by a jug full.

Mr. **Zech**. Well, we have a licensing board that is very independent. We have an appeal board that is very independent. We have all kinds of independence, and it seems to me that what I would suggest, Mr. Chairman, is if you want to do something significant, you just abolish this Commission and go to a single Administrator, and then an IG would appropriate. I would support that.

Chairman **Glenn**. No. I do not think we want it. I will take that suggestion seriously. I do not want to just laugh and cross it off.

Mr. **Zech**. No, I mean it seriously.

Chairman **Glenn**. Well, I know you do. That would be the subject for another hearing, if we really get into that.

Mr. **Zech**. IG would be appropriate then.

Chairman **Glenn**. But let me just say this, when the old Atomic Energy Commission was abolished and the NRC was set up, it was set up as a Commission—and I was not here when that was done—but it was set up as a Commission because we needed varied expertise. We did not need a dictator. We did not need a king of nuclear matters.

Mr. **Zech**. It was appropriate at that time, Mr. Chairman.

Chairman **Glenn**. Well, I would submit that as broad as our nuclear problems are, both in the nuclear non-proliferation field and in the domestic field post-TMI, to cut back on the amount of expertise we would have to apply to these problems would be a step in the wrong direction. And I would not want to move to a single person whose one-person judgment was such that we could have errors in judgment that might create disaster in this country.

There could be wrong judgments on approvals of design, or follow-up, or safety, or on whatever. And I would think that much as you might wish it, I do not think it is in the cards and I would certainly oppose it with every bit of effort I could put forward.

Mr. **Zech**. My only point is we have a tremendous amount of independence on this agency and it is very, very difficult to manage an agency with this much independence. Times have changed since the early days of the Atomic Energy Commission. Our role is quite different now. We are focusing on a lot different problems. We have 107, I think it is, nuclear power plants in operation now and our focus in on safety and quite a different role. We would be much more efficient if we had a single administrator.

Chairman **Glenn**. You are making a good case for more Commissioners, not fewer.

Mr. **Zech**. No. I am making a good case for your IG with a single administrator, because an IG right now, Mr. Chairman, is just going to be, as far as I am concerned, on more Commissioner, but he will have 6 votes. And to me, I do not think we need that.

Chairman **Glenn**. I would disagree with you on your analysis of it. I think that an independent IG has proven very valuable in other areas of Government—extremely valuable—once it is in and operating. There has been a lot of resistance from the different entities starting out, but once it is in and operating, they like it.

It gives an independent review for the boss man, whoever he is, whoever the director of the agency or the department is, and it gives him some protection, as a matter of fact, because he can turn an investigation over to this person. If he knows something or things are brought to his attention, it is investigated independent of him and his own organization.

It has been of value in other agencies. I see no reason why it would not be equally valuable here in the Nuclear Regulatory Commission. Because we have things atomic or nuclear here does not mean that it is not subject to the same kind of review as other agencies of Government.

We are going to have to move on. Briefly, I will ask for any comment you may have, all of you, just a short statement so we can move on.

Mr. **Asselstine**. Just for purposes of the record, I think you are absolutely right on the Commission form. I am the only member of the Commission that believes the Commission form is the right way to go rather than a single administrator.

Chairman **Glenn**. All right.

Mr. **Carr**. I did not know that. [Laughter.]

Mr. **Bernthal**. I think maybe other Commissioners should be asked to speak for themselves, but as I said at the outset, Mr. Chairman, I have no objection to establishing an independent IG. Frankly, after the inordinate amount of time that we spent on the second case that we had to deal with for the head of our OIA—and you are quite familiar with the case of a year or two years ago, whatever it is now—the Commission itself to a man, I think, swore that it would never do it in the same way as we did it that time with the five of us sitting down and spending hours and hours and hours, probably in total something like the better part of 2 weeks of our time, every member of this Commission dealing with a question that, in my judgment, we all could have been spared if that head of OIA were an independent person.

So I have no objection whatsoever to your suggestion that we have an independent IG. Frankly, I would just as soon not have to go through this every other year.

Chairman **Glenn**. Thank you. Mr. Carr?

Mr. **Carr**. As far as the IG goes, I would agree with the substance of what you said that we want him to do. We want that function done, no matter who does it. I am sure that if he is there and he does it, there will always be things that he does that we do not personally like the way he does them, just like there are now, that Commissioner Asselstine does not personally like the way the investigation is going; sometimes other people do not.

But as I say, the substance is what we need to focus on, the form of it. We have got a form there that appears to be doing the job now—maybe not to your satisfaction or to somebody else's—but it is a new organization. OI has only been there 5 years. We ought to be able to work that out, and I agree with the Chairman that it is a management problem. But by having said that, I quit.

Chairman **Glenn**. Mr. Roberts.

Mr. **Roberts**. No comment.

Chairman **Glenn**. No comment. Mr. Zech.

Mr. **Zech**. Thank you, sir.

Chairman **Glenn**. Thank you, gentlemen. I want to thank you for being here today. I notice that Mr. Stello is in the room. He has identified himself already and made some brief comments.

At the end of our hearing today, if Mr. Stello wants to make any other comment, we will be available to do that. I invite all of you who can take time away from your schedules to remain here to hear the rest of the testimony today, and if there are final comments at the end of the day, I would be glad to welcome your comments at that time. That was the original order that we had thought we would put together.

Thank you all very, very much.

The next panel is Mr. Ben Hayes, Director of Office of Investigations, U.S. Nuclear Regulatory Commission, and Julian S. Greenspun, former Department of Justice Attorney, now with the Washington law firm of Parker, Chapin, Flattau & Klimpl.

I would indicate that this second panel was called not because their testimony is the same. Their views on some of these things are different, but since they do discuss related issues that we are considering, we would ask them to come to the table now.

Gentlemen, just remaining standing if you would.

Do you swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Hayes**. I do.

Mr. **Greenspun**. I do.

Chairman **Glenn**. Thank you.

Mr. Hayes, we welcome your testimony this morning, and pull that mike up real tight, if you will, so we can hear.

Mr. **Hayes**. Thank you, Mr. Chairman.

Would you like for me to proceed first, Mr. Chairman?

Chairman **Glenn**. Yes, if you would, please.

TESTIMONY OF BEN B. HAYES, DIRECTOR, OFFICE OF INVESTIGATIONS, U.S. NUCLEAR REGULATORY COMMISSION

Mr. **Hayes**. My name is Ben B. Hayes. I was appointed the first permanent director of the NRC's Office of Investigations in February 1983.

I came to the NRC after 17 years of criminal investigative experience with the Internal Revenue Service, Criminal Investigation Division.

My last assignment prior to coming to the NRC was as Chief of Criminal Investigations for the Cleveland District which covers Northern Ohio.

On March 26, 1987, I was deposed under oath by Mr. Stephen Ryan, Counsel for the Majority in the Senate Governmental Affairs Committee.

My appearance at that deposition was as a result of a written request from Senator Glenn, the Committee Chairperson, rather than on my own initiative.

I subsequently was afforded an opportunity to review the transcript of my deposition. Over this past weekend, I was informed that the Committee was desirous of me to summarize the information that I provided during my deposition, and sponsor this summary as my testimony today.

I was not able to complete my review of this testimony until I returned from leave yesterday. I would like to emphasize, Mr. Chairman, that the opportunity to provide my testimony either during my deposition, or here, today, is not a privilege that I particularly sought. To the contrary, it was thrust upon me.

Nonetheless, the information which I have provided to the Committee staff, and which I am summarizing today, is truthful and accurate as I can best make it.

OI is the NRC's organization responsible for the conduct of all investigations involving NRC licensees, licensee vendors, and other persons or entities over which the NRC has jurisdiction.

The office is staffed with investigators having a broad range of experience. FBI, DEA, IRS, Naval Investigative Service, and the Army Criminal Investigations Division.

OI investigations that uncover or document wrongdoing, that appears to violate criminal statutes, are referred to the United States Department of Justice.

Investigative reports are also sent to the NRC official who requested the OI investigation so that the NRC may take any necessary actions to protect the public health and safety.

There is a strong feeling within the industry, and certain quarters of the Commission to, quote, "decriminalize", end quote, OI investigations. That is, not prosecute them criminally.

There are significant and important persons in the Commission, both at the staff and Commission level, who desire far less emphasis on criminal prosecutions.

During the years that I have been Director of OI, we have been in a constant battle to maintain its independence. There are people within the NRC, including some of the Commission itself, that want to decrease the level of confrontation that exists between OI and the nuclear industry.

I have chosen, Mr. Chairman, to address three particular issues that I covered in my deposition. The first the Committee discussed involving Commissioner Roberts, namely, the Mid-South documents. If I may.

I have been asked to describe the circumstances surrounding the discovery by OI investigators of a sensitive NRC document in the files of a senior official of Louisiana Power and Light, the utility licensed to operate the Waterford Nuclear Power Plant, New Orleans, Louisiana.

During the course of an investigation at Waterford in March of 1985, one of my investigators found this document in the personal files of the Vice President-Nuclear of LP&L.

The NRC document is an internal NRC memorandum prepared by the technical assistant to then Commissioner Victor Gilinsky, which had been addressed to the then Director of the Office of Inspection and Enforcement.

The memorandum dealt with allegations of collusion between NRC and LP&L, as well as cracks in the reactor base mat.

The OI investigator who found the documents, Mr. William J. Ward, immediately recognized the importance of the documents, initialed and dated the reverse of them for evidentiary purposes, and brought them to my attention.

I noted the following characteristics of the documents. First, the internal NRC memorandum appeared to have come directly out of Commissioner Thomas Roberts' office or files in view of the initials on it.

Second, the memorandum was attached to a transmittal memorandum on the letterhead of Middle South Services, Inc. which bore the date of June 15, 1983.

It was addressed to Mr. John J. Cordaro, and was sent from a Middle South official by the name of George E. White. The memorandum was marked, "confidential", with that term underscored.

The brief text of that memorandum states:

> Attached is a memorandum received from sources inside the NRC regarding Waterford quality assurance matters. This memorandum is for your information but I would hope that you would limit its distribution to protect the source within the NRC.

I felt that the document indicated that the Middle South, the holding company for LP&L, had a source directly inside NRC, especially inasmuch as the document came from the files of Commissioner Roberts.

Particularly startling was the fact that the document was received in Commissioner Roberts' office on Thursday, June 9, 1983, and was transmitted by Mr. White of LP&L only four working days later, June 15 of 1983.

The memorandum was important as it dealt with a base mat issue which was under active review by the NRC staff, and that it reports collusion with the licensee on the part an NRC personnel, a very serious allegation in my opinion.

The document also notes that LP&L may have withheld information on the base mat cracks from the NRC. OI subsequently initiated an investigation of that matter.

For a licensee to know that the NRC was discussing the issue of possible collusion, and the base mat issue, would give them a tremendous advantage.

This is an example of someone within the NRC, of tipping a licensee of a potential investigation. There have been instances where senior managers have tipped the fact that they intended to refer a matter to OI for investigation, or advised licensees as to how to respond to an official inquiry of the Commission.

After leaving copies of the document at the Waterford site, we returned to Washington and consulted with other members of the OI headquarters staff.

Having concluded that the document in question came from the office of Commissioner Roberts, based on various markings contained on the document, I saw basically two options: take it to the Director of the NRC Office of Inspector and Auditor, or take it to the Chairman of the NRC.

I elected to take the matter to the Chairman who at that time was Nunzio J. Palladino.

I met with the Chairman and the Chairman's executive assistant to share the document with them, and to explain how it came into the possession of OI.

Chairman Palladino asked a few questions about the circumstances, including whether I had discussed the matter with Commissioner Roberts.

The Chairman asked me for my recommendation, and I responded that the matter should be referred to the Director of OIA.

On March 14, 1985, I received a one-page memorandum from the Chairman that was hand-delivered to my office. The memorandum directed me to discuss the matter with Commissioner Roberts as soon as possible, and stated that the Chairman had given Commissioner Roberts the copies of the documents that I had provided to him.

The memorandum also stated that the reorganization plan of 1980 provides that supervision of the personnel within each Commissioner's office is that Commissioner's responsibility. The memorandum did not direct me to refer the matter to OIA.

The next day, March 15, 1985, I and Mr. William Ward, assistant to the Director of OI, met with Commissioner Roberts and Commissioner Roberts' legal assistant, Mr. James Cutchin, in Commissioner Roberts' office.

Commissioner Roberts held up what was apparently his file copy of the memorandum in question. The memorandum that he showed me appeared to be identical to the copy we found at the Waterford site.

Commissioner Roberts indicated that he had inquired into the matter, talked to all members of his staff, and was convinced that no one on his staff had sent the documents.

He suggested that the documents have been obtained by janitorial personnel, or perhaps part-time help that had been working in his office.

Commissioner Roberts asked me why I did not personally bring the matter to him first. I replied that I thought my first obligation was to notify the Chairman.

Commissioner Roberts then requested that I send him all copies of the documents in the OI files. I advised Commissioner Roberts that I had taken notes during my prior discussion with the Chairman.

Commissioner Roberts then stated he wanted all copies of my notes as well. I complied with Commissioner Roberts' instructions.

As we were leaving his office, Commissioner Roberts commented that he would probably see this on the Hill. We—Mr. Ward and I—assumed that Commissioner Roberts was referring to his upcoming confirmation hearings which would be held prior to his reappointment as an NRC Commissioner.

After reflecting on the manner in which the matter had been handled, I elected to annotate the March 14, 1985 memorandum to reflect Commissioner Roberts' request for the documentation relating to this matter.

This annotation was made by me on March 18, 1985, at which time it was countersigned by Mr. Ward.

I have been specifically asked what I would have done had I been in charge of the investigation of this incident. I would have interviewed the Middle South and LP&L officials involved in this matter under oath, to include all recipients of the document.

I would have placed Commissioner Roberts' staff under oath, and have questioned each member about the extent of their knowledge concerning this memorandum.

In short, Mr. Chairman, I would have conducted a very extensive and exhaustive investigation to determine who was leaking information to a licensee.

The leaked document was definitely not the type of document that is publicly releasable. I would have objected if the document were proposed to be released to a licensee within 7 days of it being provided to the NRC staff.

I have never before seen an internal document of this nature given to a party at interest, either in this or any other agency where I have worked.

In response to specific questions during my deposition, I acknowledged that Commissioner Roberts' office has been, in general, a continual critic of OI operations.

Commissioner Roberts has raised several proposals before the Commission that would limit, in some respects, OI's ability to initiate investigations, to make referrals to the United States Department of Justice, or otherwise conduct the business of OI.

Another incident involving a second Middle South utility, Grand Gulf Nuclear Station in Mississippi. The then regional administrator of the NRC's Region II office in Atlanta, Georgia, or his immed.ate staff, reviewed draft documents that the licensee proposed to submit to the NRC.

On detecting the fact that the documents appeared to contain a material false statement, the regional administrator, or his staff told the licensee to go back and resubmit the document because it would be considered a material false statement.

That basically, Mr. Chairman, is my recollection of the Middle South incident.

In my deposition, Mr. Chairman, I covered two other areas that I would like to bring to the Committee's attention.

Another incident occurred that appeared to be an improper contact between the NRC's executive director for Operations, commonly called the EDO, Mr. Victor Stello, and the Tennessee Valley Authority manager of nuclear power, Mr. Steven White.

The EDO is essentially the chief operating officer of the NRC. Most of the day to day activities of the NRC to include inspection, enforcement, licensing, and other regulatory activities are done under his general supervision.

The general subject of that contact was one of the major issues being investigated by OI concerning the well publicized difficulties regarding the TVA nuclear program.

By way of background, in December 1985, NRC Commissioner Asselstine was being briefed by NRC Region II personnel as well as TVA representatives on the status of the Watts Bar Nuclear Power Plant in Tennessee.

I am told that during this briefing, members of the TVA nuclear safety review staff reported that the plant was not built in accordance with NRC requirements; specifically, that the Watts Bar quality assurance program was not in conformance with the requirements of Appendix B to 10 CFR 50.

Subsequent to this briefing, the NRC sent a January 3rd, 1986 letter to TVA, asking TVA's official position as to whether Watts Bar was in compliance with Appendix B, and allowed TVA 7 days to respond in writing.

The NRC letter was very important. If TVA were to have indicated the plant was not in compliance with Appendix B, then the NRC staff might have issued an immediate stop work order to halt construction.

It was also noteworthy that Watts Bar was very close to licensing; in fact, they were anticipating licensing as early as April 1986.

I was informed by Mr. Harold Denton, director of the Office of Nuclear Reaction Regulation, that Mr. Stello had initiated a telephone call in his presence while the two of them, and other NRC staff were returning from a meeting at the Commission offices on H Street in Washington, D.C.

Mr. Denton related that the telephone call was to Mr. Steven White, the TVA manager of nuclear power, and that the conversation dealt with TVA's proposed response to the NRC's January 3rd letter.

Mr. Denton was very uncomfortable with that because in his view, White should have responded without any advice from the Commission.

Mr. Denton told me that Mr. James Taylor, director of IE, was also present in the van during that telephone call. I then went to

Mr. Taylor and asked him about it, and Mr. Taylor confirmed that the call took place.

I was very concerned on learning of that phone call as OI had an ongoing investigation regarding TVA, and one investigation in particular had addressed the issue of whether a former TVA manager had lied to the NRC concerning readiness of Watts Bar for fuel load.

There would be no reason for a licensee not to try to get a reading from the NRC as to how best to handle a very difficult situation such as a reply to that letter; however, in my view it would be improper for the NRC to give it.

Mr. Denton indicated that Mr. White appeared to be shopping for advice as to how to reply to the January 3rd letter.

At the time of the telephone conversation the NRC had not received a response to the letter. Such a response was not received until March 20th of 1986.

Both Mr. Denton and Mr. Taylor felt the NRC should be dealing at arms length with TVA on such a critical issue. Because of my concern about the possible impropriety of the telephone call, concerns that were heightened by the obvious concern expressed by Mr. Denton and Mr. Taylor, I elected to discuss the matter with Chairman Palladino.

Chairman Palladino requested that I take the matter to Ms. Sharon Connelly, the director of OIA, which I did the very same day.

After reporting the matter to OIA, I was deposed by investigators from that office shortly after making the initial report to Ms. Connelly.

I subsequent read the OIA report concerning this matter, and noted that the report consisted of my deposition and that of Mr. Stello's.

[NOTE.—After rereading the OIA report, Mr. Hayes found that although he was not deposed under oath, Mr. Stello was.]

Mr. HAYES. It also consisted of memoranda of interview rather than depositions of Messrs. Taylor and Denton. The thrust of Mr. Stello's deposition was that he advised White not to give a definitive response to the January 3, 1986, NRC letter which, in fact, asked for a very definitive response.

The March 20, 1986, TVA response was not in fact definitive. It did not provide a clear yes or no answer. Rather, it reported that Mr. White found that there had been no, quote, "pervasive", end quote, breakdown in the quality assurance program at Watts Bar. The OIA report on this matter concluded that there was no misconduct by NRC officials. My OIA deposition was taken for days after my initial report to Ms. Connelly, April 11, 1986, but Mr. Denton and Mr. Taylor were not interviewed until the middle of June 1986. Mr. Stello was not deposed until July 30, 1986.

In my view this was a very serious sensitive matter that deserved an expeditious review and investigation, and that especially concerning the stature of Mr. Stello in the NRC structure, an investigation should be quick, complete, and thorough.

Judging from the report, no one from TVA was interviewed regarding any aspect of this investigation.

During my Committee deposition, in response to Mr. Ryan's questions, I acknowledged that I would have placed Mr. White under oath and taken a deposition concerning that telephone call.

I agreed that a fair characterization of this matter was that a very senior NRC official was in contact with the licensee in a way that creates the impression that the official tipped the licensee as to how they should answer a particular inquiry which was also the subject of an OI investigation.

In the latter part of 1985, later November, or early December, I met with Chairman Palladino to give him an update on ongoing investigations involving TVA.

Responding to the Chairman's questions, I offered my impression that the Commission's handling of the TVA matter appeared to be disorganized, and that NRC had not in fact set forth a comprehensive program to identify the problems at TVA, much less a program geared toward resolving these issues.

Consequently, I recommended that the Commission appoint a senior executive to take the responsibility over the TVA project and provide that executive with the necessary resources.

Later that day, I provided a similar briefing to then Commissioner, now Chairman, Zech.

I subsequently drove to a management meeting at the NRC Region I office in King of Prussia, Pennsylvania. The next morning the management meeting commenced under the leadership of the then EDO, Mr. William Dircks.

That morning, Mr. Stello came up to me, and standing face to face, and shaking his fist in my face, said, "Ben, if what you said comes to pass, I'm going to get you." At first I thought Mr. Stello was kidding, and I responded in a jovial tone, "What are you doing, Vic, threatening me?"

Mr. Stello's reply was, "I don't care how long it takes, I'm going to get you." I believe Mr. Stello was dead serious.

A little later, Mr. Dircks, the EDO, met with me in a small conference room in the presence of Mr. Denton, Mr. Taylor, and the Region II administrator.

Mr. Dircks said, "All right, Ben, what in the hell did you tell the Commissioners because I've got to do damage control".

I informed Mr. Dircks that I provided Commissioner Zech with my personal views as they requested, that I report to the Chairman, and when asked for my views, I intend to give them to him.

The threatening incident and the conversation with Mr. Dircks took place on December 5, 1985. Within 30 days Mr. Dircks retired, and Mr. Stello became the Acting EDO.

Subsequent to that meeting there have been changes that affect the way OI operates. One of these actions was the establishment of the Investigation Review Board, commonly called the IRB.

The purpose of the IRB is basically twofold, to establish national priorities, and to assure that staff investigative requests are warranted.

The IRB has been in existence for 5 months. Prior to the establishment of the IRB, regional administrators could refer suspected wrongdoing matters to OI. This is no longer the case.

A regional administrator can no longer request an investigation without IRB concurrence. The practical effect of the IRB has been a dramatic turndown in the number of wrongdoing matters referred to OI for investigation.

There have been a total of approximately eight requests for investigation in a 5 month period since the board has been in operation.

In contrast, for a comparable 5 month period just 1 year earlier, OI received approximately 42 referrals for investigation. For example, as of the date of my deposition, one of the 5 NRC regional offices, Region I, King of Prussia, Pennsylvania, had not submitted a single request for investigation since the initiation of the IRB.

I agree with Commissioner Asselstine's statement that the IRB appears to be a, "thinly veiled attempt by the EDO to control OI by controlling what referrals are made, and thus what OI investigates."

After Mr. Stello expressed the view that cases were being referred to OI that should not have been, I wrote the EDO and asked for a list of such cases.

Mr. Stello's response was a memorandum that basically stated he did not have the resources to answer the question. I failed to see what the problem was that the staff was attempting to resolve.

Another change was SECY 85-369 which placed major limitations upon the NRC staff in its referral of matters to OI. That document establishes priorities for conducting investigations, defines wrongdoing, and provides a threshold for staff requests for investigations.

I believe the effect of that threshold has been to direct the staff to do their own internal evaluation in a way usurping the ultimate goal of an OI investigation. That is, the determination of whether the matter is or is not willful.

The staff's interpretation of this threshold appears to be that they are required to gather evidence indicating willfulness, rather than merely reporting wrongdoing.

This appears to have "chilled" surfacing of wrongdoing items to OI. It is the role of the investigator to determine whether or not a particular act was done willfully.

Other limitations exist on the authority of OI to initiate investigations regarding the character and competence of licensees. To begin an investigation solely relating to those issues, OI is required to make a recommendation to the Commission as to whether the investigation is warranted, and then be guided by a majority vote of the Commission as to whether or not to open the case.

There is one instance where the Commission declined to authorize an investigation of this nature that involved senior officials at the Wolf Creek generating station operated by Kansas City Gas and Electric.

On December 4, 1984, I wrote the Commission and outlined certain character issues pertaining to two senior Kansas Gas and Electric managers.

Among the allegations described in that memorandum were senior officials of the licensee ordering licensee employees to break into the car of a licensee employee in order to remove files; sexual harassment; and, quote, "blackballing", end quote, by the person responsible for the quality assurance program at Wolf Creek.

The latter involved an allegation that the official prevented a former employee who had raised safety concerns from getting a job elsewhere in the industry. The Commission subsequently voted 4 to 1 not to authorize the investigation. Commissioner Asselstine desired an investigation.

There were other instances of attempts to curtail OI authority, especially OI's authority to self initiate investigations.

A recent example of this was the February 13th, 1987 memorandum from Commissioner Roberts to the balance of the Commission which criticizes certain investigations initiated by OI.

Commissioner Roberts' memorandum recommends to the Commission that in the event that I—meaning Ben Hayes—did not provide a satisfactory explanation, that the Commission should, "seriously consider whether organizational and management changes are necessary to assure that OI functions as we intend it to function, and that its activities are adequately supervised and controlled."

It is my understanding, based on this memorandum, that Commissioner Roberts believes that OI no longer has the right to self-initiate investigations on wrongdoing matters identified or reported by NRC employees.

As noted in our March 20, 1987 response to Commissioner Roberts' memorandum, a response that we prepared at the direction of the Commission, I feel OI must retain the ability to self-initiate investigations regardless of the origin of the allegation.

On one recent occasion, Commissioner Roberts' legal assistant criticized OI's self initiation of a recent hospital case, and stated during a telephone conversation with me, "Quite frankly, Ben, you may have committed a material false statement before the Commission."

I, of course, did not. I did take the comment seriously, especially when I subsequently learned that the legal assistant voiced the same concern to a member of the NRC Office of General Counsel.

Nonetheless, I believe that OI did the right thing, especially in this particular case in controversy, which was a blatant example of not allowing my office to conduct a thorough, aggressive investigation into some identified false documents.

This was not the first time Commissioner Roberts' assistant has suggested to OI staff members that their jobs may be in jeopardy.

In one such incident he told Mr. Roger Fortuna, the deputy director of OI, that OI's management could be replaced if "we or I" were ever to find OI not abiding by the "will" of the Commission.

One way of controlling OI would be to remove its independent status as a Commission-level office and to make it instead report to the EDO.

There have been several Commission initiatives to move OI under the EDO. One such effort resulted in a 2 to 2 tie with one Commissioner, then Chairman Palladino, abstaining.

The effect of such a move would be to remove OI's ability to go directly to the Commissioners; rather, OI would have to go through the EDO.

A strong letter from the United States Department of Justice opposed any movement of OI under the staff.

The proposed movement of OI under the EDO was of great concern to my staff and I because we do not feel that we could exercise the independence, the thoroughness, and the completeness that we feel a professional Federal investigator must do to do a competent job, were we to become a staff office under the EDO.

If the Commission is going to have an investigative arm, I believe that investigations of wrongdoing matters must be supervised directly by the Commission rather than the NRC staff.

All cases involving potential violations of Title 18 USC 1001 have to be given to the Commission for consultation before being released to the Department of Justice.

Moreover, all referrals to the Department of Justice require consultation with the NRC Office of General Counsel. In response to Mr. Ryan's question, I agreed that in disclosing these investigative results within the agency to the Commissioners and their staff, and the Office of General Counsel, there could be a possibility that this information could get back to the licensee, especially in light of the situations where such tips have been made by NRC in the past.

I would like to emphasize, however, Mr. Chairman, that although this is of course a possibility, I do not have any indication that this in fact has ever occurred on a referred matter.

The Commission has the right to tell OI not to refer cases to the Department of Justice. The OI investigation related to the D.C. Cook nuclear plant, was referred to the Department of Justice.

That investigation focused on willful material false statements made to NRC by the licensee regarding compliance with NRC fire protection guidelines.

At the conclusion of that investigation, I exercised the authority I then had to refer matters directly to the Department of Justice. I no longer have that authority.

The completed report of investigation was provided to the NRC staff. The staff declined to make a decision whether the false statement was willful.

They took it to the Commission. In one of the meetings subsequently held regarding the D.C. Cook matter, the k voted 3 to 2 that it was a material false statement, but then voted 3 to 2 that the statement was not willful.

I recall that during that meeting there was a discussion on the record as to perhaps, "unreferring" the matter from the Department of Justice.

Apparently the Department of Justice disagreed with the Commission as they sought and obtained criminal indictments of the utility officials and the utility itself regarding the material false statements issues. These indictments were recently dismissed on statute of limitations grounds.

It was subsequent to the investigation and the controversy surrounding the D.C. Cook referral, that OI was required to send any OI reports that we wished to refer to the Department of Justice to the Office of the General Counsel, and if they involved material false statement issues, to the Commission as well, prior to such referrals.

The Commission has specifically directed OI not to conduct or perfect criminal investigations. Nonetheless, I believe criminal prosecution of those licensees who choose to deliberately violate

Commission rules and regulations would have a deterrent effect on the conduct of other licensees.

Notwithstanding these restraints, however, the Commission has authorized technical and investigative support at the request of the Department of Justice once the matter has been referred.

That concludes the summary of my deposition, Mr. Chairman.

Chairman GLENN. Thank you very much, Mr. Hayes, and I want to thank you for your candor. I know you are not a volunteer here today. We pressed you into service on this and deposed you.

And I will certainly continue to be interested in the work and progress of your investigative office.

Just a couple of questions, and then I want to turn this over to Senator Sasser, as I know he has some questions.

You have people working for you. How is morale in your office?

Mr. HAYES. Senator, I have been the director for a little over 4 years now, and I can say I think, with a degree of confidence, that the morale has not gotten any better.

As a matter of fact it has continued to slide. There is a constant turmoil. Members of my staff have told me that if we are put under the EDO, then they are going to find employment elsewhere, and if we do not start getting some outward aggressive support from the Commissioners, then they are suggesting that they intend to go elsewhere in the Federal investigative community.

Chairman GLENN. You referred specifically to the criminal cases being taken away, or not being followed up. How many successful criminal prosecutions have resulted from the efforts of OI?

Mr. HAYES. I would have to give you an approximate answer, Mr. Chairman. I would say through the grand jury process, indictment, and either plea or trial, we have probably been successful on at least six or seven cases where the jury or the court——

[Information subsequently received: According to the files of the Office of Investigations there have been seven successful prosecutions resulting from OI investigations.]

Chairman GLENN. This is criminal prosecutions?

Mr. HAYES. Yes, sir.

Chairman GLENN. What advantages accrue to a utility which owns or is building a nuclear plant when it is tipped off about a possible or actual investigation?

Mr. HAYES. Certainly, if the prospective target of an investigation gets early warning as to the thrust of the investigation, it gives that individual or utility certainly a headstart and a jump on any investigation that my office might wish to undertake.

It gives them an opportunity to basically "get their act" together, as it were, Mr. Chairman. Tremendous advantage.

Chairman GLENN. I will turn this over to Senator Sasser in just a second. I know he is particularly interested in the TVA aspect of this because he has a parochial interest in it, and we understand that completely.

Let me just say, before I turn it over to him, that as far as the questions that were asked by Mr. White, Steve White in this case—we have several Whites mentioned here this morning, a George White in the Louisiana case and a Steve White here.

I personally see no problem with someone in that position, in TVA or any place else, asking for advice and counsel.

Mr. **Hayes**. I do not, either.

Chairman **Glenn**. I would probably do the same thing in asking for it, but it is not up to the regulator to give it. That is something else, to advise him how to write a letter, or do whatever it is they are going to do. It seems to me that has to be an arms length operation there.

So I just wanted to make certain that I got that in because I do not see anything wrong with Mr. White making the request.

I do see a lot of things wrong with giving him advice on what to put in his letter, if that is what was done.

Senator Sasser.

Senator **Sasser**. Thank you very much, Mr. Chairman. I will be very brief.

First, I want to commend you, Mr. Hayes, for coming forward and giving the Committee this very valuable testimony. I understand that you are not here today entirely as a volunteer. That the NRC has been given notice by the Committee requesting your attendance.

But in any case, we do very much appreciate your testimony. I think it is very helpful testimony. I think what you have told the Committee today just reinforces my view that the Chairman's initiative in establishing an Inspector General for the NRC, and generally, an Inspector General for all sensitive Federal agencies, is indeed an excellent idea and one that this Committee I think should push energetically.

With regard to your testimony relative to the TVA, as I understood your testimony this morning, what occurred was Mr. Stello apparently initiating a telephone call to Mr. Steven White at the TVA. Is that correct?

Mr. **Hayes**. If I am not mistaken, Senator, I think Mr. White called Mr. Stello, and Mr. Stello was responding to a message to call Mr. White, but you would have to check the report to be exact.

Senator **Sasser**. But according to your statement here this morning, Mr. White apparently was simply seeking advice on how to reply to a letter from the NRC, and there is nothing wrong with his conduct in seeking advice.

The problem here is that the NRC acted improperly, to say the least, in giving advice on how the letter should be replied to. Is that your testimony this morning?

Mr. **Hayes**. That is my view, Senator.

Senator **Sasser**. Right. That is all I wanted to say, Mr. Chairman, just to make that clear, and I think you made it clear in your statement just a moment ago.

Again, Mr. Hayes, thank you for your testimony here this morning.

Chairman **Glenn**. Okay. Mr. Greenspun, we will be glad to have your testimony this morning.

TESTIMONY OF JULIAN S. GREENSPUN, FORMER DEPARTMENT OF JUSTICE ATTORNEY, NOW ASSOCIATED WITH PARKER, CHAPIN, FLATTAU & KLIMPL [1]

Mr. **Greenspun**. Thank you, Mr. Chairman.

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[1] See p. 129 for Mr. Greenspun's prepared statement.

My name is Julian Greenspun. Although for the past year I have been in private law practice.

For the past 15 years, I held a variety of Federal prosecutor positions in the U.S. Department of Justice.

Prior to 1979, I was an assistant U.S. Attorney for 7 years prosecuting cases of fraud and official corruption. From 1979 through 1986 I served as the deputy chief for Litigation in the general litigation section of the criminal division of the Department of Justice.

In this position I supervised 30 attorneys, more or less, who prosecuted among other things criminal violations of regulations promulgated by various Federal agencies such as the NRC, Mine Safety, EPA, and so forth.

I spent a significant portion of this period handling or supervising potential criminal cases relating to the commercial nuclear industry including certain aspects of the Three Mile Island case.

Based upon my extensive experience with the NRC and just about every other law enforcement agency, and many of the regulatory agencies, I think I can unequivocally say that I know of no other regulatory or investigative agency where senior agency officials have taken as many bizarre and seemingly deliberate actions intended to hamper the investigation and prosecution of individuals and companies in the industry the agency is supposed to regulate.

I would further like to explain this statement by giving the Committee two observations I have made about the NRC.

First, the NRC is in too many ways a captive of the industry it regulates. As a result, the agency discourages and has discouraged anyone inside the agency from finding wrongdoing on the part of industry representatives.

I also believe that there has been continuous improper pressure on the Office of Investigations by both industry and agency officials.

Second, the NRC has a history of failed leadership in the office that handles internal investigations and audits.

The Office of Inspector and Auditor acts as if it is part of the management, quote, unquote, "team", rather than being an independent "watchdog" for the agency.

I believe on more than one occasion OIA has avoided identifying and recommending corrective action for serious wrongdoing or general mismanagement by senior agency officials, while focusing its attention on trivia and less important issues, including such things as travel vouchers, use of the STF line, and so forth.

In my view, S. 908, the legislation recently introduced to amend the Inspector General Act of 1978 is absolutely necessary to combat these problems.

I would also agree, Senator Glenn, with Commissioner Asselstine, his view that a few more things could be added to assure that the Office of Investigations can get, and gets it fair share of referrals from the field.

It is okay to make them reporting directly to the Commissioners, but in terms of the information coming up through the system, that is a major, major problem that I think they have, and more has been done recently—I heard this morning—to crimp that flow of information.

The NRC would also benefit from additional Congressional oversight of its programs and activities. To assist the Committee, Senator, I am prepared to discuss several specific cases which I believe demonstrate the NRC's unseemly protection of the industry from necessary investigations of deliberate wrongdoing.

Unfortunately, I cannot reveal all the details of these cases because some of the information is protected by grand jury secrecy restrictions, and I have not been able to obtain copies of essential documents that are still at the Department of Justice because of those restrictions.

At the outset, I can that on more than one occasion when wrongdoing was under investigation by the Department, senior NRC officials, and perhaps some Commissioners, had exparte meetings or discussions concerning the subject matter of the investigation with those very persons under investigation.

On at least one occasion, I personally requested that a senior NRC official not meet with the licensee under investigation.

That person is sitting right behind me, Senator. It is Mr. Victor Stello who has, for some reason, been promoted to the head job at the agency.

Despite my importuning of the NRC and Mr. Stello, shortly thereafter the official—being Mr. Stello and one of his deputies, a Mr. Sniezek—engaged in a lengthy discussion with a target of the investigation.

His actions unnecessarily derailed criminal prosecution in this case, a fact which I believe was known to the time at those conducting the meetings, and I think that is why they held them. They confessed away the case which was potentially a good criminal case.

And I subsequently wrote some letters to Mr. Dircks, the executive director, and to Mr. Sniezek, and perhaps one to Mr. Stello, which I believe are being transmitted up to the Committee by the Department of Justice.

Another example of the NRC's obfuscation of a major criminal violation occurred at the Three Mile Island nuclear plant.

Furthermore, I believe that the violations that were occurring may have been a contributing factor to the eventual meltdown that occurred at the plant.

To briefly explain, Senator, NRC regulations required that if a nuclear reactor was losing over 1 gallon of water per minute, the source of which was unknown, the source of the problem has to be found within a specific timeframe, or a in a very short timeframe, quite frankly, or the reactor is shut down.

The utility's leak rate tests that they had to run by computer, or by hand, at least once every 72 hours, for the 6 month period prior to the meltdown which occurred in March 1979, indicated frequently and continuously that the reactor was losing more than 1 gallon of water per minute.

However, the operators who worked at the nuclear plant added water or hydrogen to the reactor in order to get favorable test results.

In other words they doctored and falsified the test results. In addition the results of the bad tests which they ran through the computer were destroyed by them.

Interestingly enough, a fact which the Department of Justice did not discover until much later, was that the NRC inspector who routinely inspected that plant, and who also took part in the post-meltdown investigation, purported investigation, I should say, which the NRC conducted of TMI, was aware that the plant was doctoring these records 6 months prior to the time of the accident, but did not report it as a violation.

Needless to say the plant was not shut down until a disastrous meltdown occurred. Now, the accident as I recall, occurred on or about March 28 or 29, 1979.

At that point in time the NRC, under the direction of Mr. Stello, right behind me here, sent up a team of investigators to the site, to investigate the plant, the history of the plant leading up to the accident, and so forth.

One of the things that the inspectors were looking into at that plant was the fact that the utility did have leak-rate problems shortly before the accident.

That was a focus of that investigation. Now what also happened during this investigation was one day, or one evening the investigators get a call from a person named Mr. Hartman who worked at the plant, who said he wanted to meet with them in a motel room to tell them something.

At that point in time they do go over and meet with him, and he reported to them—Mr. Hartman reported to the investigators that they were doctoring leak-rate tests, that the plant was getting worse and worse, that the leakage was getting worse and worse getting closer to the accident, and that they were falsifying leak-rate tests and they did not shut down the plant to find the source of the problem.

With that, the investigators of course being excited, ran back to tell their supervisor, a Mr. Martin who worked under Mr. Stello—Mr. Stello I believe was also up at the site of the accident at that time—and told him what they had learned.

And of course were naturally interested in following up on this. A little bit of time passed and they were told not to follow up on this, that the next investigative team that came in would take it, despite the fact that they were looking into that very leak-rate problem, and it was part of the NRC's investigative report called NUREG-0600, signed by Mr. Stello, sitting right behind me here.

So they had information about falsified leak-rate tests. The leak-rate problem was an issue. It was in the report, yet the report said nothing about falsification, nor was the Department of Justice advised of this information.

The next investigation came along called the Orenstein investigation—not the Orenstein, I am sorry—the Rogovin investigation. Mr. Rogovin was a figurehead, a lawyer in town who was appointed to run the investigation, but basically it was run by NRC people.

And an NRC person by the name of Dr. Orenstein went out and talked to Hartman, to corroborate the story and to hear it again, and this time he is told his information cannot go in the Rogovin, purported independent investigative report. So again it does not show up.

A few months later, Senator Glenn—it was about a year later actually, after the accident—a reporter from "60 Minutes", I believe it was, learns about Hartman, goes and does a taped interview, and then contacts the NRC to find out their views on what he has to say.

Now the NRC is interested and they send a flock of investigators up—this was about March of 1980—to start investigating this falsification of leak rate, as though they were surprised by it.

All right. Now it was at this point in time, when Hartman was about to go on television, that we got our first notification from the NRC that there was allegations of falsifications of leak rate tests.

And with that, I personally went over to the NRC to find out about this because I knew very little about nuclear plants, and I met with Mr. Stello and his minions, and some other people at the NRC.

Mr. Stello tried to explain to me that really, that there was nothing wrong with adding water to the reactor since reactors do lose water and you have to make up for it.

He tried to tell me that there was nothing wrong with the destruction of bad leak-rate tests, that it was okay to do that. And I said to him, I said, "Vic, how can you destroy the leak-rate tests".

"Well", he says, "it's too much trouble to make them up". I said, "What do you mean? They're made up already."

He says, "Well, it would be very expensive to keep them. It would take rooms and rooms of records to do it". But I said it is important to have this information.

He never told me at that time, Senator, that there was a regulation that required them to keep these records, and I did not know, and he knew I did not know.

I told him I would help them draft the regulation, if that is what they needed. I said how are inspectors supposed to know if they were doctoring records, if there was a problem at the plant?

It is my belief that he actively, and some of his minions actively misled us at that meeting. On the way out, I remember, either I said, or he said in response to me, that the NRC really should be doing more here, and he says to me, "We're not cops".

And I said to him, "If you're not cops, who are supposed to be the cops?" And there was no answer to that. And interestingly enough I sent two of my prosecutors out there about a month or so later, maybe more than a month, maybe two months, a fellow by the name of Mr. Bowman and Mr. Watson, and they got the same runaround from Mr. Stello.

And Mr. Stello was also pretending at my meeting, and I heard at the subsequent meeting, that they really were not sure if there were bad leak-rate tests or whatever.

Mr. Stello did not tell me at that time, which I found out during a subsequent grand jury investigation several years later, that a man by the name of Mr. Don Kirkpatrick who worked at the NRC, one of their most respected scientists, had gone up there and confirmed the fact that they had violated the leak-rate requirements for months before the accident, and that there was no question about it.

And Mr. Kirkpatrick reported this to Mr. Stello, as I subsequently learned, although not from Mr. Stello, from Mr. Kirkpatrick.

There was one other meeting, Senator, that I would like to report to you, during this very same time period where we are starting to gin up an investigation of TMI. There was a question as to whose investigation should take precedence, the civil or the criminal.

So we had to have a meeting at the Department of Justice with Mr. Stello, here, a fellow by the name of Mr. Cummings, and several—there was a Mr. Shapar there, as I recall, who was a lawyer at the NRC—and Mark Richard of the Department of Justice, and myself, and the chief of our section, Mr. Lippi. And we were discussing the issue of who should go forward, and so forth, and it was generally understood, we felt, although we expressed from the Department, that if there is a real health and safety concern, that the civil matter should go first, because if there is a plant working and there could be a danger or some other thing, that is the first order of business, the protection of life and limb.

But we said, Vic, this is a plant that has been closed so we should go first. With that, Mr. Stello says that he does not like the idea of a Department of Justice investigation because an investigation would be bad for the operators' morale.

And I asked him whether falsifying records is okay. And then with that, and Mark Richard's expression that he really thinks the criminal should go first, and that the criminal investigation should—in this matter—and criminal investigations are important—Mr. Stello says, "Nobody's going to tell me how to treat my licensees" and turns his back on Mark Richard, wheels his chair around.

His licensees, not the public's licensees. His licensees. The end result of all of this, as you may know, Senator, is that the utility eventually plead guilty, were convicted criminally for violating NRC regulations, including some that I was never advised existed when I went out there for my first meetings.

To demonstrate to the Committee the depth of emotion felt by other Department of Justice officials, I will refer to the statement of the U.S. Attorney, David Queen, in Harrisburg, who is now an assistant secretary for the Treasury, when he said at the sentencing proceedings:

> The notion that the NRC investigation—whatever on earth that is—is a far superior vehicle to these proceedings today is utter poppycock. I had not intended to address this issue but I cannot stand silent and allow the charade that has been carried on by the NRC to be treated as anything but that.
>
> We are the only institution, since this accident occurred, that has made the slightest damn effort to see this thing through to a conclusion.
>
> The NRC has not conducted any meaningful investigation, to this day has used as a pretext the fact that the grand jury was conducting an investigation, as a vehicle to avoid addressing its responsibilities.

This is Mr. Queen talking.

> As recently as 6 weeks ago, the NRC voted 3 to 2 to ignore what we are doing here today. When the United States Department of Justice brought this indictment, when I got sworn into office, this investigation was virtually dormant and had been for some time.

Mr. Queen still talking.

> I didn't see the NRC hustling to clean up the loose ends and to make it known to the public just what went on in 1978 or 1979. We made a Herculean effort to get to the bottom of the facts, something that was not done by the Nuclear Regulatory Commission.

Mr. Queen, still talking.

> As recently as 6 weeks ago, as I was about to say, they voted basically to proceed with the Unit 1 license restart application irrespective of the outcome of these criminal proceedings.
>
> Now I realize this is of secondary significance as to whether the court ought to take the utility's plea, but Mr. Curran who was TMI's lawyer, seems to raise the issue that we are not to worry if there are any loose ends here today because the NRC will take care of it."
>
> It is utterly delusional.

Mr. Queen, continuing.

> The NRC doesn't care what is in the indictment. They have said so. They don't care what the outcome of this case is. They have said so. They are going to proceed and do whatever they want to do, and that is fine because I have no control over the NRC, nor does the Attorney General or anyone else in the Department of Justice.

But the statement of facts as read by me a short time ago are precisely a correct statement of what took place. The TMI case, among others, demonstrated the real need—this is not part of Mr. Queen's quote.

The TMI case, among others, demonstrated the real need for an independent office of investigation at the NRC, and the lengths to which some NRC leaders will go to to protect the industry.

From my perspective at the Department, once OI was created, it functioned fairly effectively since it had sent the Department several dozen criminal referrals.

Prior to OI, the Department received very few referrals from the NRC, from that OIA which did the job before them, which the Commissioners up here were trying to tell you that everything is fine with OIA and that we do not need an Inspector General.

Stephen Trott sent a letter—Assistant Attorney General at that time—to Honorable Nunzio Palladino, the NRC Chairman, dated March 19th, 1985, which commented on the shortage of cases we received before Mr. Hayes was installed in his position.

Despite OI's success, Senator, I detect a continued pressure on OI to conform with the generally "hands off" attitude, if not policy, of the NRC.

These pressures have led to continuous attempts to control OI, and to stifle the influx or the exposure of deliberate wrongdoing in these enormous human endeavors which the construction and operation of nuclear plants are, to have them exposed to the public, or to Mr. Hayes, or the Department of Justice, or, at the worst, receive anything more than a fine which to these utilities is nothing but a wrist slap. It is not even a day's income.

First they said—Mr. Stello and his minions, and several of the Commissioners—that they really do not have authority to do criminal investigations, and I heard that repeated this morning from Mr. Hayes. I was astounded that they are still taking that line.

The fact of the matter is that the civil and the criminal are the same, and you could say to the NRC, aren't you interested in knowing the depth of these people's honesty or dishonesty that you are supposed to be regulating? And they are telling this man that he cannot investigate for willfulness?

It is preposterous and it shows you the desperate attempts they will go to, more than anything else, really.

Then they took the position, after they realized that they had to have some investigations, that about this—that they tried to redefine what a false statement was.

They said that it is really not a false statement unless it is in writing or under oath. In other words, they, over at the Commission, were going to repeal the statutes promulgated by this Congress of the United States on their own.

Lying must be a real problem out there in the industry, if these men are so desperate to eliminate oral statements or written statements. Otherwise, why be so concerned that you have got to repeal it or eliminate it? If it is no problem you just ignore it. It is incredible, absolutely incredible.

And while on that point, the U.S. Attorney in Michigan, and one of our attorneys, went out in the D.C. Cook case to interview Commissioner Roberts, who had no hesitancy in telling him that he did not think there should be any false statement cases unless they are under oath.

Of course most the utility's dealings with the NRC are in writing, and not under oath, or oral. They do not swear these industry people in every time they want to communicate with them.

So that basically eliminates any criminal referrals, and it gives us some idea of Mr. Roberts' idea of how significant the truth is, I believe.

I think that everything has to be done that can be done in legislation, to make sure that any screening by this man—Mr. Stello or anybody else—to insulate the truth from coming to Mr. Hayes' attention—and all they can do is investigate and discover the truth, they cannot prosecute cases, they cannot make up cases that do not exist—be halted by this Congress, by some form of legislation.

A final example that I would like to share with the Committee does not concern a particular criminal case. It is the proposed advisory committee on the rights of licensees which the NRC hurriedly tried to establish in 1983 without the knowledge of the Department of Justice.

Those behind the establishment of an advisory—and it was first proposed by a very prominent, respected, very able attorney in this town who represents many of the licensees, who the Commissioners, and others at the NRC who he has got a very close relationship dealing with them frequently, and working for the people that they regulate, proposed this idea of an advisory committee to deal with and address the rights of licensees and witnesses in NRC investigations.

And virtually all the proposals were directed—if you looked at them—at insinuating management into employee interviews and whistleblower interviews before Ben Hayes, or anybody else at the NRC would get to them.

That there had to be notification to the utility before you interviewed somebody, that they had a right to have the industry's lawyer present, and so forth.

So they had to have an advisory committee set up for this. There was no hue and cry from people who were being interviewed.

Why did they need an advisory committee, and set on up possibly in violation of Congress's Federal Advisory Committee Act without even telling the Department of Justice. We found out about it at the last minute.

Those and other proposed restrictions would have gone well beyond what the Constitution and Federal law require in the way of due process for targets or subjects of investigations—there is a typo there, excuse me, in my prepared statement—targets or subjects of investigations who would no doubt profit handsomely by insinuating themselves into interviews of employees.

This effort, under the guise of an advisory committee—and that is all it was, was a guise—would have carried the special relationship between the NRC and its licensees to preposterous lengths.

It was merely a front to protect the utility companies from disclosure of wrongdoing. Everything that you heard come out here is all directed, I would submit, Senator, at protecting the utilities from disclosure of wrongdoing.

However, DOJ and Congressional intervention on Advisory Committee this ruse, and similarly kept Office of Investigations from being placed under senior staff at that time, and helped persuade the Commission not to adopt a pro-licensee definition of materials false statement, which was another remarkable episode. And then I go in my prepared statement to discuss the matters with Commissioner Roberts, but they all feel that way with one exception, I think, and that is what we have seen. And all of them were appointed, Mr. Stello here, knowing some of the prior problems.

The last issue I would like to discuss concerns the inadequacy of the NRC's Office of Inspector and Auditor, the putative Inspector General's Office. The leadership of this office has been a disaster. Whoever is in that position is the henchman for the controlling interests in the Commission.

One director of that office was effectively dismissed from it but only after an embarrassing court decision cast doubt upon his integrity. The current head of the office has been the subject of a criminal referral to the Justice Department, and there is correspondence commenting on that, and at a very minimum horrendous judgment by her and, perhaps, more than that, although not quite sufficient to bring a criminal prosecution at the time.

OIA has, historically, ignored wrongdoing by NRC staff, which NRC staff wrongdoing worked to the benefit of operators of nuclear plants. Now they spend a lot of time, however, on such things as travel vouchers, use of the FTS lines, and on occasion they can even try and do a hatchet job at the direction of the Commission on Ben Hayes' shop, if he is getting out of line, according to the feeling of some of the Commissioners.

I am convinced that a statutory IG who has the independence to look will find real wrongdoing at the NRC as other IGs have found at their agency, and I believe there is a need for it.

There is one other point that I would like to bring to the Senators' attention. It is very interesting to put some of this in perspective. At the TMI plant there was a terrible accident, as we know, that occurred. Six months before the accident the NRC knew of the falsification, and there was no report by the inspector of the falsification.

There was another plant, Senator Glenn, called the Zimmer plant, which I think the Senator may know about, in Southern Ohio. For years NRC inspectors were finding serious problems at the Zimmer plant in their inspections, and were told by the regional office in Chicago not to write it up and in reports but to keep a little notebook of violations he was finding. So, if the inspector got hit by a truck, nobody would know about the violations.

This plant was about to open, the Zimmer plant, shortly, but for a whistleblower by the name of Applegate, who twice had to go to the NRC after they did a couple whitewash investigations. They tried to do the same thing with Hartman. They tried to whitewash that.

So you had a plant that would have opened that was eventually found, the Zimmer plant, to be so unsafe—once they were publicly exposed, were found so unsafe that they could not allow it to open. But for a whistleblower, that wouldn't have happened and it could have opened. And you had the TMI plant where they knew about the problems prior to it, and but for a whistleblower, we wouldn't have known about those problems.

I would like to thank you for providing me with this opportunity to testify. I believe, personally, the continued existence and absolutely necessary expansion of nuclear power—that is my belief that it is—is too important to the future of this country to allow its regulation in a haphazard fashion. As with the banking and securities industries, however, effective, vigorous and independent enforcement of the law is necessary to minimize the possibility of a catastrophe as well as promote public confidence in the system.

We have no right to expect either with purported watchdogs who are supposed to work for the public but are in reality in bed with those whom they are charged with regulating.

Thank you.

Chairman GLENN. Thank you, Mr. Greenspun. I think you have answered most of the questions I had concerning the possibility of criminal prosecutions, how important it is to assure OI's independence within the agency, and the NRC's testimony opposing provisions of S. 908 concerning the OI. Some of your testimony about Three Mile Island was new to me.

Do you feel that TMI might never had occurred if the plant had been shut down based on the bad leak rates?

Mr. GREENSPUN. I feel that there was a good possibility and I will explain why. It is not that the plant would have gotten out of control but I think that the people working there could have recognized the problem.

There was a failure to recognize a problem as a result of which they did not shut the plant down right away. They had a leak rate problem for six months prior to the accident. According to their records there were losses of water in excesses of the permissible limits. Also, to measure leak rate there are several devices as I understand—and I am not an engineer—there are several devices which help signal or alert the operators that they may have a water loss problem.

One of those has to do with gauges or thermometers, and for months prior to the accident, in addition to the high leak rates they also had these high thermometer readings. Now, there was some rule or regulation that if the thermometer reading went over 150 degrees or whatever the ceiling or the floor was they had to take immediate corrective action.

Had they shut down the plant to deal with those two problems, the leak rate tests and the high temperature readings, when the accident started to happen the operators could have determined that they were losing water because the thermometers would have been reading too high and that would have alerted them, but they were desensitized to that That is one of the relationships.

In terms of the unidentified sources of leakage, the scientists cannot say to this day whether in fact the accident was caused by an unidentified source of leakage, so they cannot say either way, to my understanding.

Chairman GLENN. Thank you very much. Your testimony is important. It fills in some gaps about TMI, among other things.

I knew that Mr. Stello's name was going to be mentioned at this hearing and I informed him of that fact earlier and of the circumstances under which I felt it would probably be mentioned. I did not realize the extent of your interaction with Mr. Stello until your testimony now.

So the record will show, my staff met with Mr. Stello for about an hour and a half on April 6 to inform him of all of the issues that would be raised at the hearing which involved him or might involve him. He was told that he would be given an opportunity at the hearing, if he wished, to make a statement in response to any testimony that might come up involving him.

I think this has been a little more extensive this morning than I anticipated, or that I am sure Mr. Stello anticipated. I do think, however, we want to move along to get our other two panels up here and then, Mr. Stello, you will be given your turn to answer at that time.

Mr. HAYES. May I have 3 minutes of the Committee's time, Mr. Chairman?

Chairman GLENN. Yes, but as rapidly as possible because it is noon now and we have two more panels yet to go this morning. We will try and get through them as fast as we possibly can, but very briefly go ahead.

Mr. HAYES. Thank you. I personally am supportive of the establishment of an inspector general at the NRC and we polled out managers within OI and they are unanimous in that support, Mr. Chairman.

I would like to address a couple of issues that surfaced this morning that are not a part of my prepared testimony; namely, the backlog situation and resources. I do not think that the record reflects that every 30 days my office directors throughout the country meet with the senior staff person in the respective regions to establish priorities. The staff itself sets OI priorities as to which cases they would like investigated with respect to public health and safety. So we have always and we will continue to do that.

The second issue is the backlog matter. I do not think that backlog should be a factor in determining the merit of a wrongdoing allegation. You have to look at the allegation as to its source and its potential for correctness, not whether or not you have the resources to address it. You look at the allegation on its merits, you docket that item, and backlog is a direct reflection of the lack of resources, so I would like to make those points.

Secondly, Mr. Chairman, we are preparing within my staff a paper that we would like to submit to the Committee concerning the inspector general and our view on that, if the Committee would accept that.

Chairman **Glenn**. That would be welcome. We will include it in our Committee record.[1]

Mr. **Hayes**. Thank you.

Chairman **Glenn**. Thank you very much, gentlemen.

Our next panel was to be a one-person panel, Victoria Toensing, Deputy Assistant Attorney General, Criminal Division. I understand that Ms. Toensing has been delayed at another meeting and will not be here until late, so we will proceed to Panel 4, George A. Mulley, Jr., Assistant Director for Investigations, Office of Inspector and Auditor, U.S. Nuclear Regulatory Commission, and H. Shannon Phillips, Senior Resident Inspector, U.S. Nuclear Regulatory Commission, the Comanche Peak Nuclear Power Plant.

Gentlemen, welcome.

I understand Ms. Toensing is in a meeting with some visiting Australians on some other matters this morning and I do not know whether she will make it or not, but we will proceed anyway with this panel.

Gentlemen, would you stand, please?

Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Mulley**. Yes, I do.

Mr. **Phillips**. I do.

TESTIMONY OF GEORGE A. MULLEY, JR., ASSISTANT DIRECTOR FOR INVESTIGATIONS, OFFICE OF INSPECTOR AND AUDITOR, U.S. NUCLEAR REGULATORY COMMISSION

Mr. **Mulley**. My name is George Mulley. I am the Assistant Director for Investigations at the Nuclear Regulatory Commission's Office of Inspector and Auditor. OIA investigates to assure the integrity of all NRC operations and, among other things, investigates allegations of NRC employee misconduct.

I am testifying today pursuant to a letter from the Committee to Commissioner Zech requesting my appearance at this hearing. On March 20, 1987, I was deposed under oath by counsel to the Committee. This testimony is a summary of my sworn statement made at that deposition.

I have been asked to testify today about an investigation that I conducted last year concerning allegations of intimidation and harassment of NRC employees by their supervisors in Region IV for reporting safety problems. The particular nuclear plant involved was Comanche Peak, which is owned by Texas Utilities Electric, and has been under construction for 14 years. I have also been asked to testify about the process by which the results of my investigation were reported to the Commission.

In March 1986 OIA was contacted by Commissioner James Asselstine regarding allegations that he had received from a number of personnel working in Region IV, including Senior Resident Inspector Shannon Phillips, about harassment and intimidation from certain Region IV managers for identifying safety concerns. Gary

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[1] See p. 120.

Edles, then Acting Director of OIA, told me that Commissioner Asselstine requested that I personally be assigned to conduct the investigation. Commissioner Asselstine told Mr. Edles that Shannon Phillips had indicated a confidence in me personally, although he had no confidence in OIA. The Commissioner instructed that during this investigation all interviews I conducted be transcribed. This was unusual for OIA, but I thought it was a good procedure because it would provide a complete and accurate record.

Soon thereafter I interviewed Mr. Phillips and determined that the allegations he raised were significant. As the Senior Resident Inspector for Construction at Comanche Peak, it was his job to investigate Texas Utility's compliance with Federal regulations in the construction of the Comanche Peak plant. It was his belief that the condition of the Comanche Peak plant was indeterminate and that Region IV had not properly inspected the plan or enforced Federal regulations over the plant's 14-year construction history.

Additionally, Mr. Phillips stated that he had been harassed, intimidated and pressured to remove proposed findings from draft inspection reports by downgrading them to a less serious issue or by deleting them entirely from the reports. Mr. Phillips provided evidence that when he and other inspectors resisted downgrading or deleting at least 30 proposed findings, the Director of the Comanche Peak Task Group, Thomas Westerman, and another Region IV manager, Eric Johnson, removed findings from the inspection reports or substantially changed the reports without the inspectors' knowledge or at other times without their concurrence.

In one case the Region issued a final inspection report using the signature page from a draft version of the report. This made it appear that the inspection report was approved by the inspectors involved, when actually the inspectors were neither informed of the changes nor told of the issuance of the report.

I believe Mr. Phillips' allegations were exactly the types of concerns that should be thoroughly investigated by an independent investigator within the NRC without regard to the potential consequences of the investigation on the licensability of a nuclear power plant.

The evidence showed that the attitude of Region IV management was to create no further problems for Texas Utilities. The evidence also indicated that another Region IV manager, Dorwin Hunter, had been transferred from the Comanche Peak project and later demoted as a result of his strong regulatory enforcement attitude towards Comanche Peak. In addition, I learned of other instances of harassment and intimidation of NRC inspectors at other plants regulated by Region IV, such as Fort St. Vrain and Wolf Creek.

After hearing Mr. Phillips' evidence and interviewing other inspectors and consultants who raised similar allegations, I became concerned that if NRC managers, both in Washington and at the Region, learned the full scope of the management problems being raised in Region IV, my investigation would be interfered with.

I did my best to see to it that no one within NRC headquarters or Region IV knew the extent of my probe into the allegations concerning Region IV's attitude toward regulating nuclear power plants within its jurisdiction.

Unfortunately, even my best attempts to assure an independent investigation, including putting my personal credibility on the line, were not enough to overcome the overall distrust of OIA. It was clear to me that other NRC employees and other witnesses I wanted to interview did not believe that OIA could or would protect them from retaliation. I had to use Shannon Phillips to get individuals to talk to me because those individuals did not trust any representative of OIA.

In June 1986, soon after I asked Mr. Phillips to help convince other witnesses to talk to me, I learned that the Administrator of Region IV was going to remove Phillips from the plant site. Mr. Robert Martin, Regional Administrator, stated during a conference call with me and Sharon Connelly, the Director of OIA, that he was going to remove Phillips from the site because Phillips was getting other people to cooperate with the OIA investigation, and therefore had lost his objectivity. I believed that this proposed action constituted a reprisal for Phillips' initiating the OIA investigation and I got the NRC headquarters to stop the transfer. However, at that point the confidentiality of the investigation was compromised.

From that point forward I was under pressure from Victor Stello, the Executive Director for Operations, to complete the investigation and then to write the report.

Given this pressure, I felt I had no choice but to limit this investigation to the specific concerns originally raised by Phillips and to ignore, for the time being, other witnesses' complaints of Region IV's regulatory mismanagement of other plants and the evidence of harassment, intimidation, and pressure on other inspectors.

The pressure came not only from the Executive Director of the NRC staff, but also from my supervisor, Sharon Connelly. In late July of 1986 I finished the field work. In September and October of 1986, while I was trying to write the report, the pressure being put on me by Connelly was so great that I asked her for a meeting with Chairman Zech to determine if the pressure was actually coming from the Chairman's office, as she said it was. Chairman Zech assured me that there was no reason to be hasty in the course of either the investigation or the writing of the report. He stated he wanted a thorough and complete investigative report.

I then finished pulling together the 3,000-page investigative record into a draft report, which included what I knew to be negative conclusions about the management of Region IV in general, and certain individual managers in particular. I gave the draft portions of the report to Sharon Connelly in October 1986.

The conclusions that I reached were:

(1) Region IV managers acted inappropriately to limit the violations assessed at Comanche Peak, and that Phillips was harassed and intimidated by Region IV management in an effort to get him to downgrade or delete his inspection findings.

(2) The Region IV Quality Assurance Inspection Program, as implemented at Comanche Peak, could not be relied upon as evidence of the safe construction of the plant.

(3) Because of the unreliability of the information entered on the automated inspection tracking forms by Region IV inspection per-

sonnel concerning Comanche Peak, data obtained from these forms should not be used for any NRC licensing decision.

Sharon Connelly personally participated in substantially modifying my draft report. Connelly removed the conclusions I had written, and she focused the report on the merits of the technical issues underlying the violations the inspectors had found at Comanche Peak. This is an area outside the expertise of OIA.

I do not recall any prior occasion where Sharon Connelly took such an active role in the preparation of one of my reports. For the first time in my career as an OIA investigator, she assigned a group of OIA auditors to rewrite the report. She also removed many of the statements from Region IV managers whom I had quoted. The statements substantiated the conclusions I had reached and demonstrated the lax enforcement attitude of Regional management.

For example, when I asked Eric Johnson how the agency would go about at this late date trying to verify that Comanche Peak was built safely absent all the necessary quality assurance inspections and records, he responded:

> We shouldn't worry about the past. You just go out and kind of kick the tires, and if it feels good you go on from there.

Another example was the removal of the explanations made by Tom Westerman about why he was being very tight on issuing violations at Comanche Peak more so than at other plants. He told me that proposed violations, unless "absolutely correct," would create a lot of unnecessary paperwork and could lead to his credibility as a witness being questioned during NRC hearings.

I thought these quotations reflected, more accurately than my words could, a misconception of their responsibilities as regulators. Connelly removed the quotations because she said they were inflammatory and OIA could be criticized for taking things out of context. However, I had been very careful to put both the context and the references in my draft report. I believe that by removing the conclusions and the quotations Connelly downplayed the severity of the Region IV management problem. Her editing also prevented individual Region IV managers from being told that this type of lax enforcement attitude is not condoned by the NRC. Finally, it denied the Commissioners the opportunity to protect the integrity of the NRC enforcement program.

The report, or what was left of it, was finally completed and sent to the Commission and the Executive Director for Operations on November 26, 1986.

It is my understanding that Mr. Stello then sought permission from the Commissioners to distribute the OIA report throughout the agency and, as far as I know, permission was given. This was a very unusual way of dealing with an OIA report. It was also, in my opinion, a very unsatisfactory way of treating the report because it disclosed throughout the agency the testimony of the persons who had put their faith in the OIA office and in me personally. I was not consulted when the internal distribution was made so that I could comment on the decision and inform the individual witnesses.

Within days of the release, I was contacted by witnesses who had given me testimony under oath and who were extremely distressed that their testimony had been disclosed throughout the agency. Most of these individuals felt that the distribution was done purposely to expose them to possible future retaliation.

It is my personal belief that the distribution of this report destroyed the rapport I had developed with these witnesses and it will be extremely difficult, if not impossible, to get NRC employees or others to cooperate with other ongoing investigations of Region IV management.

In conclusion, I would like to say that the problems brought to OIA by Shannon Phillips and others are extremely serious. The integrity of the regulatory process cannot be assured if the regulators become the defenders and the protectors of the utility they are supposed to investigate and regulate. One former Division Director at Region IV who I interviewed told me:

> I did not consider that Region IV had a strong enforcement program, and I believe that a lack of a strong enforcement program has its roots in the attitudes of the senior managers.

The Commissioners needed to be informed of this attitude and its alleged specific consequences at Comanche Peak and at other nuclear plants regulated by Region IV. Shannon Phillips tried to do that and is now fighting to save his career.

What happened to this investigation is an example that points out the failure of OIA to bring serious management problems to the attention of the Commissioners. In my personal view OIA did not go far enough in this investigation to ensure the integrity of Region IV's program.

That is the end of my statement.

Chairman Glenn. Thank you very much.

Mr. H. Shannon Phillips, Senior Resident Inspector at the Comanche Peak Nuclear Power Plant, your statement, please.

TESTIMONY OF H. SHANNON PHILLIPS, SENIOR RESIDENT INSPECTOR, U.S. NUCLEAR REGULATORY COMMISSION, COMANCHE PEAK NUCLEAR POWER PLANT

Mr. Phillips. Thank you, Mr. Chairman.

My name is H. Shannon Phillips. I am the Nuclear Regulatory Commission's Senior Resident Inspector for Construction at the Comanche Peak Nuclear Power Plant in Texas. I am part of the Region IV staff.

I am testifying today pursuant to a letter from the Committee to Commissioner Zech requesting my attendance here today. My loyalty is to the NRC. I did not seek to testify, but am here pursuant to the Committee's request.

I have been asked to testify about recent events regarding Region IV's regulation of Comanche Peak and particularly how these events have destroyed my career.

I have been an NRC inspector for over 10 years. Before that I worked as a materials scientist and engineer, and a quality assurance division manager in the aerospace industry. I am a materials engineer by training and degree.

As a Senior Resident Inspector at Comanche Peak Nuclear Plant, it is my responsibility, by law, to conduct inspections for purposes of determining whether Texas Utilities is constructing the plant in accordance with NRC regulations and other legal requirements.

In 1985 I reported to the Chief of the Region IV Comanche Peak Task Group, Thomas F. Westerman, and his assistant, Ian Barnes. Westerman and Barnes reported to the Division Director, Eric Johnson, who, in turn, reported to the Region IV Administrator, Robert D. Martin.

According to the NRC's operating regulations, if my inspection reveals that legal requirements have been violated or commitments have otherwise not been met, my job is to write up the negative findings. Such findings are classified by the inspector as either a violation, a deviation or an unresolved item according to the criteria and standards set forth in the regulations. In practice, the NRC inspector's decision on classifying such negative findings is rarely questioned.

I was initially assigned to the Comanche Peak plant in mid-1984 to work with a special inspection team. This team was constituted by NRC headquarters to assess the severity of the numerous reported problems in the plant's design and construction. The former Region IV Division Director, Richard Denise, told me that I had been chosen for the Comanche Peak team because of my experience with other troubled construction projects.

The head of the inspection team, Thomas Ippilito, told me to do a thorough and detailed job so that the NRC could decide if the plant was safe, and therefore ready to load fuel. It was well known that Texas Utilities, the plant's owner, had applied for permission to load fuel in the fall of 1984.

The special inspection team completed its field inspection work in early fall of 1984. The NRC published the team's conclusions and findings in a series of letters beginning in September 1984 and ending January 8, 1985. The January 8, 1985 letter summarized the NRC's observations on the quality assurance program at Comanche Peak as follows:

Although the Texas Utilities QA program documentation met NRC's requirements, the weaknesses of its implementation demonstrate that Texas Utilities lacked the commitment to aggressively implement an effective QA/QC program in several areas.

A list of specifics have been omitted but are available. This is a January 8, 1985, letter from Darrell Eisenhut to Michael Spence, President, Texas Utilities.

That month Texas Utilities withdrew its request for fuel loading.

From late 1984 to September 1985, I and other inspectors were permitted the organizational freedom to identify deviations and violations at the plant, and did so. During this time period I was under the direct supervision of Doyle Hunnicutt, Section Chief, who reported to Dorwin Hunter, the Branch Chief, and Mr. Hunter reported to Richard Denise, the Division Director.

In the fall of 1985 Mr. Denise resigned, and Hunter and Hunnicutt were replaced by Westerman and Johnson, respectively. The effect of the new appointments was immediately apparent. Westerman and Johnson began to challenge my inspection findings and those of other inspectors and consultants assigned to Comanche

Peak. Westerman consistently suggested that we remove certain negative findings about the plant and that we downgrade violations to the category of findings called "unresolved items."

Westerman's motivation for these actions was, according to his own statements, that he was there to license the plant. It is my belief that the basis for the intimidating conduct was my management's concern that negative inspection findings might reflect unfavorably on the licensee's performance and thereby reduce their chances of getting a license.

This is most obviously demonstrated by what happened to one of the major inspection reports, 85-07/05. The inspection field work was completed April and June 1985. The report was submitted to the Region IV office with the concurrence of all the inspectors and the supervisor at that time, Dorwin Hunter.

However, the report was not issued at that time. Instead, after the management change, Westerman pressured me to make substantive changes to the report. I did not succumb to such pressure.

During the fall of 1985 other inspection reports were subjected to the same treatment. Over a 6 to 7 month period, from the fall of 1985 to February of 1986, I and other inspectors were subjected to increasing pressure to downgrade negative findings to lesser categories or to delete them entirely. The findings which were being deleted were significant. During this time frame at least 30 proposed violations and findings were the subject of dispute between the site inspectors and Region IV management. These findings included:

—The proper installation of the reactor vessel could not be verified because no installation specifications or procedures were available.

—There was totally inadequate control of the design and construction records for piping and reactor containment liner plate, millions of pieces of paper had been shipped off-site in cardboard boxes with no controls, no inventory, and no duplicates.

—A trend analysis of all Region IV negative inspection findings from 1974 to 1984 showed adverse trends in Texas Utilities' QA program for design and construction of Comanche Peak, which, by the way, TU should have been required to analyze.

Some of the management harassment during this time was subtle, such as comments by my supervisor, "Don't you make quite a bit of money, don't you?" I took note of the statement and understood it well. It meant that if I didn't buckle under to Mr. Westerman's instructions I could lose my job.

On another occasion Westerman made a comment that Region IV would never forget a critical report 8432, an inspection into the failures of management of TU's corporate QA program. I was told by Mr. Westerman that it would be better if I found another job outside of Region IV.

Region IV management officials began to nitpick me. For example, I was asked for a strict accounting of my whereabouts and my time on site, and this is out of the ordinary for a resident inspector who has a very flexible schedule, to make back-shift inspections and so forth. I was also asked for explanations and justifications on the most minor details of the inspection work I was able to do.

Throughout the fall of 1985 Tom Westerman conducted a series of meetings on inspection reports in which he pressured me, badgered me, harassed and ultimately threatened me if I didn't remove negative findings from inspection reports. One meeting in late November 1985, on control of design and construction records lasted approximately 5 hours. I was directed to change many of my findings.

The entire atmosphere demoralized and frustrated me. By this time Westerman had told me to quit digging. I began to question whether identifying problems at Comanche Peak was really worth the hassle. Finally, in January 1986, I told Westerman that I would put only the information he wanted into the reports. I told him that I would identify the problems according to NRC procedures, I could do no less; he could classify them and tell me how to write them up in the reports.

However, in February 1986 I learned that the Region had issued a report of a major inspection without including several of the violations cited in the draft report, including damaging information concerning the reactor vessel. Significantly, Westerman and Johnson in releasing the report publicly used the draft inspectors' signature sheet as a part of the final report.

I knew that I had to report the matter and my overall concerns to someone independent of Region IV management. I also knew I could not report this to Region IV management because recent actions had convinced me that Region IV officials condoned or either directed the misconduct of Westerman and Johnson. For example, Westerman had just recently been promoted after Region IV became aware of these findings, or concerns about harassment and intimidation. I was aware of the NRC's Office of Inspector and Auditor, but knew of its reputation of being unable or unwilling to investigate the type of serious management issues that I was raising. In March 1986 I decided to take my concerns to Commissioner James Asselstine. I understand that other inspectors and consultants also contacted Commissioner Asselstine with similar complaints.

I told Commissioner Asselstine that I would agree to talk to George Mulley of OIA because of his personal reputation for professionalism, but that I doubted the ability of the office to probe the full extent of the management problem and to recommend necessary corrective actions.

In March 1986 I met with Mr. Mulley and provided him with detailed information and substantive evidence of my original findings, the actions of Region IV management in removing the findings, and the harassment and intimidation to which I was subjected.

I also told Mr. Mulley of incidents of harassment, intimidation and other negative personnel actions taken against other Region IV staff who had raised serious quality design and/or construction questions about the Region IV plants.

Over the next few months Mr. Mulley, working alone, conducted his investigation. During this time I felt isolated, my secretary was reassigned, and I was excluded from most Region IV staff meetings.

In May 1986 a consultant at the Comanche Peak plant hired by NRC came to me and complained that, among other things, Westerman had steered the consultant group away from quality assurance issues and that certain NRC inspections were deficient. I told him that he should talk to OIA.

Soon thereafter I learned that I was going to be removed from my job at the site for merely asking the NRC consultant to provide information to OIA. I went to Mr. Mulley, and although he was able to stop my transfer off site, the intimidation and the isolation only increased. I was also told not to talk to any NRC consultants, and I was left alone in the trailer apart from the rest of the NRC staff, and was repeatedly called upon to defend my findings previously cited in draft reports.

Between July and November 1986 I knew that Mr. Mulley was writing the report of his investigation. I also knew that he had not pursued many of the incidents of harassment and pressure to remove or minimize findings at other Region IV facilities, including Wolf Creek and Fort St. Vrain. It was clear to me that Mr. Mulley was under pressure to downplay the significance of the evidence that he had obtained.

The report was released in late November 1986. Within days it was distributed throughout the agency. All of the witnesses who had talked to Mr. Mulley were identified, and I believe this was an outrageous breach of confidence. The faith that Mr. Mulley had painstakingly established was shattered. It was clear to us that OIA had no little or no independence and their findings received little respect, if any, at NRC headquarters.

In fact, the following week the Regional Administrator, Mr. Martin, gave a monetary award to Tom Westerman for his work at Comanche Peak. I, on the other hand, received from Mr. Barnes the first derogatory comments on my performance appraisal in my NRC career. I believe the action was in reprisal for my having gone to OIA with my concerns; therefore, I filed a grievance and subsequently the agency was forced to withdraw the comments by the supervisor.

This entire situation is wrong. NRC inspectors must have the freedom to identify findings about the utilities that the NRC regulates and to write the truth about what they find, regardless of the impact that the truth will have on the licensing of the plant.

Unfortunately, my experience is that OIA has very little, if any, credibility among NRC employees, and that something must be done to give employees an avenue to bring up these types of concerns. I think an independent inspector general is necessary to monitor the NRC management system to assure the integrity of the regulatory process, including the protection of inspectors like myself.

This concludes my testimony. I am prepared to answer questions the Committee may have on my experience at Comanche Peak.

Chairman GLENN. Thank you very much, both of you.

Mr. Phillips, it is your testimony, as I understand it, that managers in Region IV were so concerned about getting the Comanche Peak plant licensed that they manipulated the inspection program and, in fact, cut out findings in inspection reports, is that correct?

Mr. PHILLIPS. Yes, sir. Our inspection findings were downgraded, deleted or changed, and in some cases without our knowledge, so that the utility would have a better record for the licensing proceeding.

Chairman GLENN. Has there been a change in Region IV managers since the OIA report was issued or are the same managers still in charge of inspection there?

Mr. PHILLIPS. The same managers are still in charge.

Chairman GLENN. Mr. Mulley, prior to this investigation had you written your investigative report to include your conclusions about the findings?

Mr. MULLEY. Yes, sir, I had.

Chairman GLENN. Are there any guidelines developed by your office which discuss proper investigative technique in the writing of investigative reports?

Mr. MULLEY. Yes, sir. OIA has a handbook, and in that handbook it gives the guidance that we are supposed to follow in reporting conclusions to the Commission. Normally what is done is that we will outline our conclusions in our report, and then copy those conclusions onto a letter of transmittal, which is then sent to the Commission.

In this particular case there were no conclusions as such sent up to the Commission concerning the Comanche Peak investigation.

Chairman GLENN. As I understand it, your conclusions never went to the Commission because they were edited out of your report and never included in any transmittal memo; is that correct?

Mr. MULLEY. That is absolutely correct; yes, sir.

Chairman GLENN. Thank you, gentlemen. I appreciate your testimony very, very much.

Concerning Ms. Toensing, we have told her not to bother to come. She was at the other meeting and wasn't sure she could make it. It is an international meeting she is taking part in this morning.

We sent word to her that we will enter her statement in the record and any other statement she may wish to include after she reviews the testimony this morning. There will be additional written questions for Ms. Toensing [1] for the record. We will also include in the record our previous questions to the Justice Department [2] and the answers we got back.

Chairman GLENN. We had indicated to Mr. Stello, as I stated before, that he would be able to respond to anything which mentioned him or anything came up regarding his operation, and I want to do that now.

Mr. Stello, if you will come to the table, please.

Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. STELLO. I do.

Chairman GLENN. Thank you.

Mr. Stello, some of the concerns raised this morning are obvious from the statements that were made. Because many of these involved you so directly and on a personal basis, some of which I was not aware were going to come up at the hearing this morning. We have no way of knowing that some of these things will come out during a hearing, and that is the way hearings are.

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[1] See p. 167 for Ms. Toensing's prepared statement and p. 175 for responses to written questions.

[2] See p. 189 for Department of Justice responses to written questions.

I am sure that you will probably wish to review the total hearing record this morning and, perhaps, make response to the Committee in writing so that can be included in the Committee record. And I would be glad to give you that opportunity to do so if you like, in addition to whatever you wish to say here this morning.

Mr. STELLO. I really appreciate that opportunity and would be very glad to respond.[1] And I think it would be very, very important, Mr. Chairman, for you to have the benefit of some additional insight regarding some comments that have been made.

Chairman GLENN. All right.

Mr. STELLO. With that understanding, I would at least, however, like to have the opportunity to respond to some things I think that went on here today that I think are very, very important and that you ought to be aware of other views.

Chairman GLENN. I want to give you an opportunity to speak right now on what you have heard here this morning, but I realize that this is quite voluminous and there may be many fine points of this that came out this morning that, even though I was making some notes here, I am sure I don't have them all. I want to review the record myself and, perhaps, submit some additional questions to you for a response, and I am sure you would wish the same opportunity to review the record, too.

I do want this to be a very fair hearing, and we would welcome any response you might make after the hearing record has been completed. And we will be glad to provide you a full copy of the hearing record this morning so you can review it and make a response as you see fit, and we will include that in the Committee report, your response along with the Committee report, so that we do have a fair hearing on all aspects of this.

There have been a number of accusations made, and I guess we would call them accusations. Recounting them, they concerned your hampering an investigation, your operation being a captive of industry, your interviews have derailed criminal investigations, your knowledge of falsified leak rate data.

You have been sitting here listening. I would just let you take off and have whatever response you may wish to make to these accusations.

TESTIMONY OF VICTOR STELLO, JR., EXECUTIVE DIRECTOR FOR OPERATIONS, U.S. NUCLEAR REGULATORY COMMISSION

Mr. STELLO. Well, you are right. There are a lot of things to respond to. I don't believe I can do all of that today from memory and cover all of them.

Chairman GLENN. No. I don't expect you to.

Mr. STELLO. I would at least like to make a few points, if I can, and I, obviously, don't have prepared testimony. I was responding and will respond to what I heard here this morning.

One of the issues that came up this morning that I believe needs an explanation, and that is the issue of OI and what OI does, so that there is a very, very thorough understanding of the very, very important function that OI does with respect to day-to-day operations and the safety of nuclear power plants.

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[1] See p. 141.

The example that we have of a few weeks ago at Peach Bottom is, in my view, the most efficient and important function where we have our Office of Investigation, our inspection program, together to go out, find the facts, determine what the safety issues are so we can take appropriate regulatory action.

TMI has taught us a lesson, a very, very important lesson, in terms of the need to be sure that the people who manage these plants do so with integrity. We have upgraded our inspection program, our investigative program, to do just that, and we have been doing a great deal of it over the last few years.

But the interaction that needs to go on, and here is the dichotomy, I support fully the need for independence of OI so the job is a thorough, complete job. But at the same time I also feel compelled to at least note that the day-to-day operations, the people who make these decisions are not the Commissioners, themselves; they are the inspectors in the field, the Branch Chief, the Division Directors, the Regional Administrator, who are charged with the responsibility of day-to-day safety. And they need to have the information regarding performance of people, and we know that that is as important or even more important than the performance of equipment. They have to be taken together to be assured that we can take the proper safety action. So there at least is an element that pulls for closer working relationships, and I think the testimony today makes an adequate record that that relationship is not good. I will talk a minute about what I have been trying to do about it.

One of the issues that we have been trying to deal with is the backlog of investigations. What is going on? What are the highest priority? Where do we really need them for safety? And what ought we do about them? In answer, I instituted the Referral Board; and, if I might, what I would like to at least do is for the record state what it is that the purpose of that Board is and what it is that they are to do, because it is, in fact, a management issue that we are faced with.

We are, at least I am responsible to assure that the resources of the agency are used and used so properly. One of the problems we have is the need for getting the investigations that we need for safety to be done first, with those of lower priority to come later. So the purpose of having this is to have the Board assure there is a regulatory need for the investigation, determine if there is a reasonable basis for belief of potential wrongdoing, review the referral in relation to other referrals to OI and in relation to agencywide priorities, review the assigned priority—high, normal and low—and assure that the priority is consistent with the program and overall agency needs, and, finally, review the schedule when the results of the investigation are needed to support regulatory action. That means safety.

Now the reason we have this problem is these referrals come from various places within the agency. They come from 5 regional offices as well as two of the program offices, one of which can make referrals and they have to make them through me. So there are a number of places referrals are made.

Well, they all don't have equal priority. They don't all have equal safety significance, and we need to be assured that we are working on those that are most important to the agency. That was my purpose. That is what I am interested in. And that is what I am after.

This Board is a temporary thing, in place for 6 months. Now one of the things I just received from them is a report attempting to now arrange for the priority of these investigations in terms of which ones are most important and which ones we need most. What the data, however, showed, in contrast to what you heard this morning, that last year, or let me start with—September 1985 through December 1985, there were 20 formal referrals to OI; there were 70 in 1986; this year thus far there are 10, and at the rate that is going, if it continues at that rate there would be 36 for the year.

There was an anomaly last year where 14 of those referrals related directly to TVA. This hardly suggests to me the rather drastic reduction you heard about, and at least the report that I got from the Board seems to be in conflict. Now that appears at least something that we ought to straighten out for the record. If you are under the belief that the Referral Board has had a significant impact on the number of referrals being made, and I think we ought to look at the record and let the statistics and the data speak for themselves, rather than the characterization and the way it was presented by Ben Hayes over a 5-month period. And I don't debate if you look at a 5-month period it may show what he said, but I think we need to look at the total numbers.

One other point that he made was at the date of his deposition that there were no referrals from Region II. As of this moment in time, there are two in Region—Region I—excuse me. And if they continue at that rate, they will have eight for this year in contrast to seven they had last year. So the suggestion that somehow something has dried up in Region I is just not correct.

But more significant, Mr. Hayes indicated that at the date of his deposition, which I believe was March 26, that there were no referrals. The most important investigation that we have ever started in this agency, in my view, the most important, the most substantive and the most useful, is the one in Peach Bottom. That was started without even contacting the Referral Board. It was oral, and it was March 24th. I would be surprised that Mr. Hayes was not aware of what I think is the most important investigation.

I would like to at least leave you with, then, the impression that we, in the staff, recognize how important investigations are. We need them as part of our jobs to assure that these plants are operated safely.

Whatever is done, I would caution that people give very, very careful consideration that it does not deflect from our purpose of safety. The legislation, as I read it, I am very concerned that if it does pass, in fact, it will make our program less effective, and, hence, reactors less safe. I think you needed to know that and others have not had an opportunity to study that, but that is my view. And the reason for it is as I have explained, the very, very close coupling in the need for the day-to-day input.

Now I think we can accomplish all this by working harder at it. I was very, very concerned—surprised—to learn that Mr. Ben Hayes harbored the opinion of me that he has. For your information, Senator Glenn, I am a very aggressive, very forceful, and a very action-oriented manager. I don't run from conflict, I confront it if it is there. Some of the things you have heard today suggest I do. I do what I believe is right and what is in the best interest of our agency and the purpose we serve—safety.

I meet with Mr. Hayes about once a month. We get together at his convenience at 7 o'clock in the morning and share a pot of coffee, to go over the status of investigations. If he had this problem, it would seem to me that that is a symptom of why we are not working well together and we ought to be exploring ways to do that.

I have made two attempts to meet with the members of his staff in the past. He has said pretty accurately the views of his staff and the concerns they have, but I would have expressed them even more dramatically. I was frightened when I left the meeting. And our relationship is terrible and we need to improve it, and I am committed and try to do that. I invite Mr. Hayes, personally, to all of our meetings when we discuss a reactor or reactor safety issues, so that he has an appreciation of the staff.

It is clear to me that this kind of a management issue where he is concerned that I would "go after and get him" and that I would be vindictive I find absurd. I am not that kind of a person, I think he knows that, and I think I have the reputation for not being that kind of a person. Aggressive? You bet I am.

We need to work on the relationships, it is clear to me. I am not sure I know the answers because I wasn't aware of the magnitude of that problem to get us closer together and make sure that we both do our jobs, and we do them so that the health and safety of the public is, in fact, improved by the process since that ought to be the goal.

With respect to the comments made, and I will try to be brief and make just two more points—made by Mr. Mulley about pressure, well, let me give you the context of this and my concern. Our Regional IV office has been under criticism for quite some time. I have been and continue to be very, very concerned about morale in that Region, its effectiveness and efficiency of the people doing their jobs, which are directly related to safety.

Having the issue of the pending investigation hanging so long has been very demoralizing; and, in fact, I have learned that some of the senior managers are very unhappy and at least in one case one of them is now actively seeking employment elsewhere. This does not do our agency any good. It does not do the country any good.

If what you heard was pressure, that is exactly what I did. I felt the need to have that investigation done, and done quickly. The impact it was having was great. It still is having that impact today.

I met with Mr. Mulley and Sharon Connelly and told them that I was very, very concerned, and I think, as I recall, Mr. Mulley was there, and indicated was there anything I could do to help them in other investigations so that they could bring this to a quick conclusion. I felt the need to have it done quickly.

She indicated that if I could offer her some more help from the technical point of view, of additional assistance in some other things she was doing, that that perhaps would help free Mr. Mulley and perhaps we could get the investigation done. This was in July. She indicated perhaps I could get it in August.

I didn't—obviously, the pressure didn't work. I didn't get it until November, and that was an 8-month investigation. I asked your staff how long they have investigated this matter for passing a law for the country, which is a very, very significant law, and they indicated 6 weeks. I think an 8-month investigation, we ought to be able to do better than that. I think we need to be aware of the sensitivity and the impact of those investigations on what they do to efficiency and effectiveness.

Last, I was very, very surprised at a lot of things I heard from Julian Greenspun in one respect, and not in many others. I know he hasn't been particularly pleased with me. He doesn't particularly care for me. I think that is reasonably apparent.

Some of the meetings that he referred to again bring me back to this issue of criminal versus civil. It is an issue that I had a great deal of concern for, and again because of the resource implication and the ability to take safety action.

When Justice becomes involved in an issue it impacts our program, and we have to take other compensatory things, and in one case we are still devoting additional resources because of a pending case. It impacts us in a real way. We have to use additional resources.

I offered in the meeting that he was referring to that what we ought to do is find a way to deal with this particular problem, and I even offered at that time to share with Justice just the allegations we get; decide which cases they are really interested in, and try to find a way to work better together with issues that are both germane to their program in terms of criminal issues as well as ours for civil and actually what steps we have to take for safety. I believe that was one of the meetings he was referring to.

And I feel very, very strongly about the issue of the NRC is responsible for safety. And if I indicated I don't want anybody interfering with what we need to do with our licensees, you bet. I feel very, very strong that the NRC is responsible for regulating these facilities for the health and safety of the public.

I at least want to make two points with respect to his comments, and I think perhaps I need to respond to them more specifically. But the issues that he raised were the matter of a grand jury investigation, and that investigation has been concluded. And not only do I now understand, and I had a copy of the letter, that they would not find anything on the basis of what they had learned to proceed further in a prosecutorial sense, but there was a rather interesting conclusion that they not only concluded that, but they had only concluded that what is unlikely—that any further investigation would likely produce evidence which would lead to that purpose.

I need to tell you that as part of being interviewed under those various grand jury investigations going on by two FBI agents, I asked them who they were working for and they told me Julian Greenspun. I must tell you I was absolutely astounded that a prosecutor who had personal involvement on the issues of whether they were the way he described them or the way I would describe them, which was right or which was wrong, that he was prosecuting a case. A very troubling thing to me that I would—and I do understand it is prohibited by the rules in the Department of Justice, and I wonder whether that is an ethical thing for an attorney to do. It was very, very troubling to me when I learned about it.

I later learned that he was removed from the case. I do not know whether there was any record—coupling as a result of my comment. However, that was an observation I made to the two FBI investigators when they interviewed me, and it was a very troubling thing.

I say that so that there is at least——

Chairman GLENN. I am not sure I followed you there, if you could run through that again. You mean that a prosecuting attorney in the Department of Justice would have two FBI members helping get information on the case? I wouldn't think that is unusual at all. Is it?

Mr. STELLO. Neither did I, except I was astounded to learn that he was the prosecutor prosecuting the very kinds of issues for which he had a direct involvement in. I find that very strange. And I do believe it is prohibited.

That is, an issue of who is right or wrong——

Chairman GLENN. Well, you may want to address that in your written statement later on——

Mr. STELLO. That is what I said. I——

Chairman GLENN [continuing]. Because I am not sure I get the differentiation there.

Mr. STELLO. Well, let me try it one brief time.

Chairman GLENN. Okay. Yes, try me again.

Mr. STELLO. The issue was whether the Department of Justice told us to stop our investigation. I was responsible for it. We were told to stop. Implicated in who told us to stop, Julian Greenspun. The FBI investigators were coming to ask me was I told to stop. And that is when I asked them, well, who are you working for? Is this really an issue? And he told me.

And I said, I don't understand it. How can that be? How can someone be prosecuting an issue when he clearly is involved?

I say that in the context because I think a lot of these issues that have gone on and the feeling that he has for me have left questions in my mind, but I will respond with the opportunity—I don't want to take more time with my testimony this morning than was provided by the other panels. And with your permission, I would be very happy, as soon as I can get the record, to respond as quickly as possible.

Chairman GLENN. Well, I would appreciate that. And I do not have a tremendous list of questions here all primed to go at you on this, but there are some things I would like to ask before we end this morning, just notes I have made during the hearing this morning.

It was stated under oath that you derailed a criminal investigation by discussions with the licensee. How do you respond to that? I guess the question would be, did you discuss with a licensee anything surrounding that case during that time period when you were asked not to?

Mr. STELLO. The issue, as I recall it, is the Nuclear Pharmacy case. Mr. Greenspun had indicated he told me. I have no recollection of being told. I asked all of the other people who were involved the best I could. Their recollection is that the Department of Justice had, in fact, notified our Office of Inspector and Auditor of his desire not for us to have that meeting. There was a member of the Office of Inspector and Auditor present at the meeting. He did not indicate that at the meeting, but after the meeting was over, I learned subsequent to that time that there was, in fact, such a request.

I have no recollection that the request of me, and others who were involved indicate that the request was made through our Office of Inspector and Auditor. I am not suggesting that Mr. Greenspun's memory is faulty, but based on what I was able to reconstruct when I learned of that issue, I have just explained what happened.

Chairman GLENN. Well, what is your personal policy if there are matters under investigation by either the Commission or approvals that are underway in the field or inspections underway that are questionable? What is your policy—regardless of the Commission—what are your own policies as regards contact with a licensee under investigation?

Mr. STELLO. Unfortunately, our regulatory responsibilities don't stop, so that the staff activity responsible for regulating that facility must go on. We have at the present time probably on the order of 50 or 60 staff people working actively, for example, on TVA, and there are probably pending on TVA 18 or 19 investigations.

Chairman GLENN. I understand that. How about matters in contention?

Mr. STELLO. The same would be true.

Chairman GLENN. No; you have a lot of regulation that goes on that is not in contention in regulating a plant. You may have a specific issue where an investigation is underway on a specific issue within a plant. Do you feel it is inappropriate to comment on that when there is such an investigation going on, or to give advice?

Mr. STELLO. No. That is precisely the point I am—I think if you use the word "advice," you are referring to the phone call. I will come to that if you like. But in terms of day-to-day activities——

Chairman GLENN. That is next.

Mr. STELLO. Okay. Day-to-day activities, Appendix B is a very broadly based issue that speaks to the quality of constructing a nuclear power plant. That is an issue that clearly you are now aware of is under investigation. But there are, literally, hundreds and hundreds of issues that are going on that deal directly with Appendix B issues, and we need to deal with them to determine whether there are particular problems at the facility and to fix them. So we have to have a way, and we try very carefully to assure that we are not impacting in any way with the investigative process while doing so, but clearly our work goes on in parallel with it.

Chairman GLENN. I understand that.

How about in the Steve White case that was discussed here earlier on? I don't disagree with Mr. White calling up and asking for advice. I do disagree with him being given advice. Did you give him advice on how to respond to the queries that had been addressed to him?

Mr. STELLO. The subject of that telephone call was a matter that you are aware of was investigated. He read me the letter, and he asked me what I thought about it. And there were two particular points that come out of the interview. The one directly related to my recollection at the time that dealt with this is an issue, Appendix B, that is going on, it is not over. I think you, Mr. White, need to understand that if—and you have an obligation, if you find a problem, you need to bring that to our attention so we can deal with it, and you have to commit to do that.

That comment did not go into his March 30th letter. But also in the interview you will find that there is reference to another phone call with Mr. White regarding the same issue. My advice to him when he called up about it was that I didn't believe that he was there long enough since he had come to TUA in January and that he ought to take enough time to really understand the issue before he responded at all.

That was the advice I gave him. He, obviously, didn't take that advice. He responded.

It is not unusual for any of the staff at all levels to get calls dealing with an issue. This was not an issue under investigation, but rather an issue that had to be resolved for licensing. At the time this was going on, and it was and still is a major licensing issue. We have to resolve it. If there are pieces of equipment or problems or whatever at that facility, we need to know what they are and be sure they are fixed before we be prepared to license the facility.

So I don't—and it was clear in the interview of me, and, incidentally, Mr. Hayes indicated that my interview was not under oath. That is just wrong. My interview was, in fact, under oath. He is correct his was not, however.

It is very, very important for us to get our job done, and our job is health and safety and it means getting issues resolved, and we have got to do them.

Chairman GLENN. Let me have a couple more——

Mr. STELLO. I don't feel the least bit that there was—in fact, that was the finding of the investigation and it was reviewed by the Office of the General Counsel—any question that if I—there was any impropriety about doing this. I made the phone call, and it was in the presence of several others from the NRC. I think Mr. Denton was clearly there. Taylor. And I believe there were others there, I believe Mr. Fouchard being one of them.

But irrelevant. I was not attempting to hide anything. There was nothing that I did that I felt that was any way improper, and I still am convinced of that today. That I believe it is very, very important for us to be able to communicate with the licensees and make sure they understand what we need. And what we need is, we needed to get the Appendix B issue resolved. It has created a big problem.

Chairman GLENN. I don't want to spend a lot more time on this. But you referred to the other two senior NRC staff members that were there and overheard the conversation. One of them said we thought it was "inappropriate," to use his word, and the other was "uncomfortable" with what was being said.

So let me get on to another area, just very briefly here, too. How about the falsified leak rate data, and I believe it was implied that you knew that this data was not correct? Is that true? Did you know there was falsified data?

Mr. STELLO. We did an investigation and there are two parts of it that need to be made distinct. I think Mr. Greenspun was referring to an LER—a licensing event report—that resulted from one of our inspectors looking into leak rate issues prior to the accident, which indicated there were clearly problems with the leak rate. That was not pursued very well. True statement.

After the accident there was an interview by Mr. Martin, and, incidentally, he said those were under my direction. They were not. I was assigned, as Mr. Denton's deputy, for recovery of the accident and was up at the site while this was going on. Those were not being done under my direction, contrary to what Mr. Greenspun said.

There was an interview by Mr. Martin which later got incorporated into the Rogovin study. He mentioned Harold Orenstein, who looked into this matter and did some investigation. That never even made it into the Rogovin study, and I don't have satisfactory answers for that.

When I learned of the problem, when I became aware of it, and it was rightfully pointed out that there was a particular TV show that was going to be done, I had an investigative team already in place to start looking at other matters related to TMI.

Chairman GLENN. Yes. But did you know the data was falsified?

Mr. STELLO. Yes. I am getting to when I knew it.

Chairman GLENN. Okay.

Mr. STELLO. I asked that investigative team upon learning about it to go in and do an investigation. They came back with information which clearly indicated that the leak rate tests that were being done were done in a way that was improper and falsified. That was the first we learned of it and clearly understood of wrongdoing, and, hence, got Justice involved.

Chairman GLENN. Well, is there no checking of those records as they are kept? And then, it was also indicated in earlier testimony that the records were then destroyed, indicating——

Mr. STELLO. No.

Chairman GLENN [continuing]. Something had not been checked up on properly.

Mr. STELLO. All right. Let me explain that. That is right.

One of the issues when we talked to Justice was TMI was throwing away some records of leak rate tests that were not bad. And the question became, is all of that covered under our existing regulations?

I brought our attorneys and the head of our licensing office to come over and meet with the Department of Justice people because we were hard pressed as to under what basis is a record really not a record. You know, if you know that it is in fact in error.

We had evidence that some of these leak rates, they were calculating negative leak rates. Now clearly that is scientifically impossible. Do you need to keep a record showing negative leak rates? Well, one could make the argument that for some other purpose it may be a record, but not for the purpose of complying with our regulation because that isn't a record that is very useful.

Chairman GLENN. No. But I would think both kinds of records would be very, very valuable. Because in the one case, if you have a negative leak rate, which, as you say, is obviously impossible, it also shows your system is all fouled up for monitoring it.

Mr. STELLO. That clearly is the problem, and that was the subject and I think the intent of the comment with respect to the earlier LER. That we should have been tipped off, we should have been aware that there were, in fact, problems up at TMI on the leak rate calculations and gone in and done something about it. We didn't do that. We should have.

Chairman GLENN. You could reply in more detail to that also later, if you would like to.

There were also statements on the record here that you are out to get Mr. Hayes. Quotes here about threats are very disturbing:

"Ben, if what you said comes to pass I'm going to get you

And there is a reply: "What are you doing, Vic, threatening me?"

Mr. Stello's reply was: "I don't care how long it takes I'm going to get you."

And the belief was you were dead serious. Were you?

Mr. STELLO. No. I already explained that and I will repeat. I am amazed that Mr. Hayes probably has held that view now for a year and a half, since 1985 in November or December. I think it was December.

I indicated that I meet with Mr. Hayes and have—share a pot of coffee every morning—at least once a month. Seven o'clock we get together and go over status of investigations.

He has not indicated to me that he has that concern. I find that very, very difficult, because I believe good management requires you to be candid and open, air your differences of your opinion. And if he felt that I really felt that way, he should have at least come in and had a discussion about it. Or he should have gone to OIA and say I am trying to undermine him or get him, or gone to the Chairman or someone else.

Hearing about it down here on the Hill at a Senate hearing is very disappointing to me, and not the way I believe that management ought to interact with each other. And I have indicated was a clear symptom of a major problem we have in our interfacing with OI.

Chairman GLENN. Well, I want to bring this thing full circle to where we started this morning. We could go on and on here with more questions. We will probably have additional questions for you and the other witnesses this morning as other Senators read the record and want to ask additional questions and as I read the record and want to ask additional questions also.

You all have been very patient with us in sticking with us here today. This has been about a 4-hour, over a 4-hour hearing, which is a bit unusual. I think just from what we have heard today, though, we can suggest some conclusions, anyway.

That some of the internal investigations of things going on within the NRC have been inadequate and, perhaps, somewhat misdirected.

Secondly, there continues to be deep concern by many observers that the agency is still bending over backwards to accommodate licensees, and perhaps strong action, such as that taken at Peach Bottom, good as that is, is insufficient to dispel some of those concerns.

And number three, investigators for the NRC who vigorously pursue cases assigned to them have occasionally been harassed according to their own testimony under oath.

Four, the NRC has evinced interest in reducing the ability of its investigative units to independently pursue investigations they think are worthy of pursuing.

And I guess in my view, we come back full circle to where we started. I think this hearing this morning has certainly justified what I see as a necessity; and that is, an independent, statutory IG at NRC. It has proven successful in other agencies, and I think it can prove very valuable here.

In your written response, if you give it to us—I think you haven't really disputed some of the major facts in the testimony of Mr. Greenspun and Mr. Mulley and Mr. Hayes. I guess what you are saying is that there is an interpretation of the facts that is more benign than those individuals obviously believe, and I guess we will have to leave it to everyone's own judgment the resolution of that. But I would look forward to getting your response to that and to what has gone on this morning.

We will get the hearing record to you as soon as we possibly can because I know you are going to want to make an expeditious reply, and I would request that you do make an expeditious reply so we can get on with this. We are going to propose this legislation. It won't be very long until we will be marking it up.

And we have included NRC in this because we thought there was a concern there. We know of the opposition within NRC. We have had some of these facts come to light regarding what is going on over there. So any reply that you could make in a timely fashion we would appreciate very much.

Mr. STELLO. Mr. Chairman, may I make one comment with respect to Mr. Mulley and pressure?

Chairman GLENN. Certainly.

Mr. STELLO. Had there been an IG or an OIA I would have felt compelled to do everything that I could to try to cause him to complete that investigation as quickly as possible because of the adverse impact that was having on one of our major program elements.

Chairman GLENN. Before we adjourn I would like to make sure that Mr. Roberts' memo, the Mid-South situation, will be entered into the record file.[1]

Thank you all for being here this morning. Thank you, and we will look forward to your reply to the other statements.

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[1] See p. 193.

The Committee will stand in recess subject to the call of the Chairman.

[Whereupon, at 1:10 p.m., the Committee was recessed, to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

100TH CONGRESS
1ST SESSION

S. 908

To amend the Inspector General Act of 1978.

IN THE SENATE OF THE UNITED STATES

APRIL 3 (legislative day, MARCH 30), 1987

Mr. GLENN (for himself, Mr. ROTH, Mr. CHILES, Mr. PRYOR, Mr. SASSER, Mr. HEINZ, Mr. LEVIN of Michigan, Mr. RUDMAN, Mr. BINGAMAN, Mr. MITCHELL, Mr. STEVENS, Mr. NUNN, Mr. TRIBLE, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Inspector General Act of 1978.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Inspector General Act Amendments of 1987".

CONFORMATION OF AUTHORITIES OF EXISTING OFFICES OF INSPECTORS GENERAL

SEC. 2. (a) Section 2(1) of the Inspector General Act of 1978 is amended to read as follows:

"(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);".

(b) Section 9(a)(1) of such Act is amended—

(1) by striking out subparagraph (I);

(2) by redesignating subparagraphs (M) and (N) as subparagraphs (O) and (P), respectively;

(3) by redesignating subparagraphs (J) through (L) as subparagraphs (K) through (M), respectively;

(4) by redesignating subparagraphs (E) through (H) as subparagraphs (G) through (J), respectively;

(5) by inserting after subparagraph (D) the following new subparagraphs:

"(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

"(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94–505);"; and

(6) by inserting after subparagraph (M) (as redesignated by paragraph (3) of this subsection) the following new subparagraph:

"(N) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);".

(c) Section 11 of such Act is amended—

(1) by inserting "Energy, Health and Human Services," after "Education," each place it appears in paragraphs (1) and (2);

(2) by striking out "Community Services," in paragraph (1);

(3) by striking out "the Community Services Administration," in paragraph (2);

(4) by inserting "or the Chairman of the Railroad Retirement Board;" before "as the case may be" in paragraph (1); and

(5) by inserting "the Railroad Retirement Board," after "National Aeronautics and Space Administration," in paragraph (2).

(d)(1)(A) Section 208 of the Department of Energy Organization Act is repealed.

(B) The table of contents in the first section of such Act is amended by striking out the item relating to section 208.

(2) Title II of Public Law 94-505 is repealed.

(3) Section 23 of the Railroad Retirement Act of 1974 is repealed.

(e) The transfer of functions under the amendments made by subsection (b) shall not affect any individual, who on the date of enactment of this Act, is serving as the Inspector General of the Department of Energy, the Department of Health and Human Services, or the Railroad Retirement Board. Any such individual shall continue to serve in such position until such individual dies, resigns, or is removed from office in accordance with the Inspector General Act of 1978.

UNIFORM SALARIES FOR INSPECTORS GENERAL

SEC. 3. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"Inspector General, Department of Commerce.

"Inspector General, Department of the Interior.

"Inspector General, Agency for International Development.

"Inspector General, Environmental Protection Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Railroad Retirement Board.

"Inspector General, Small Business Administration.".

(b) Section 5316 of such title is amended by striking out the paragraphs relating to—

(1) the Inspector General of the Department of Commerce;

(2) the Inspector General of the Department of the Interior;

(3) the Inspector General of the Agency for International Development;

(4) the Inspector General of the Community Services Administration;

(5) the Inspector General of the Environmental Protection Agency;

(6) the Inspector General of the General Services Administration;

(7) the Inspector General of the National Aeronautics and Space Administration; and

(8) the Inspector General of the Small Business Administration.

ESTABLISHING AN OFFICE OF INSPECTOR GENERAL IN THE DEPARTMENT OF THE TREASURY, THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE NUCLEAR REGULATORY COMMISSION, AND THE OFFICE OF PERSONNEL MANAGEMENT

SEC. 4. (a) Section 9(a)(1) of the Inspector General Act of 1978 (as amended by section 2(b) of this Act) is further amended—

(1) by redesignating subparagraphs (O) and (P) (as redesignated by paragraph (2) of section 2(b) of this Act) as subparagraphs (S) and (T), respectively;

(2) by redesignating subparagraph (N) (as added by paragraph (6) of section 2(b) of this Act) as subparagraph (R);

(3) by redesignating subparagraphs (K), (L), and (M) (as redesignated by paragraph (3) of section 2(b) of this Act) as subparagraphs (L), (N), and (O), respectively;

(4) by inserting after subparagraph (J) (as redesignated by paragraph (4) of section 2(b) of this Act) the following new subparagraph:

"(K) of the Department of the Treasury, the office of that department referred to as the 'Office of Inspector General', and that portion of each of the offices of that department referred to as the 'Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms', the 'Office of Internal Affairs, United States Customs Service', the 'Office of Inspections, Internal Revenue Service', and the 'Office of Inspections, United States Secret Service' which is engaged in internal audit activities;";

(5) by inserting after subparagraph (L) (as redesignated by paragraph (3) of this subsection) the following new subparagraph:

"(M) of the Federal Emergency Management Agency, the office of that agency referred to as the 'Office of Inspector General';"; and

(6) by inserting after subparagraph (O) (as redesignated by paragraph (3) of this subsection) the following new subparagraphs:

"(P) of the Nuclear Regulatory Commission, the office of that commission referred to as the 'Office of Inspector and Auditor';

"(Q) of the Office of Personnel Management, the offices of that agency referred to as the 'Office of Inspector General', the 'Insurance Audits Unit, Retirement and Insurance Group', and the 'Program Integrity Section of the Retirement Inspection Branch, Retirement and Insurance Group';".

(b)(1) Section 11(1) of such Act (as amended by section 2(c) of this Act) is further amended—

(A) by striking out "or Transportation or" and inserting in lieu thereof "Transportation, or the Treasury;"

(B) by striking out ", or the Director of the United States Information Agency" and inserting in lieu thereof a semicolon and "the Director of the Federal Emergency Management Agency, the Office of

Personnel Management, or the United States Information Agency;"; and

(C) by inserting "the Nuclear Regulatory Commission or" before "the Railroad Retirement Board" (as added by section 2(c)(4) of this Act).

(2) Section 11(2) of such Act (as amended by section 2(c) of this Act) is further amended—

(A) by striking out "or Transportation" and inserting in lieu thereof "Transportation, or the Treasury;";

(B) by inserting "the Federal Emergency Management Agency," after "the Environmental Protection Agency,"; and

(C) by inserting "the Nuclear Regulatory Commission, the Office of Personnel Management," after "the National Aeronautics and Space Administration,".

(c) The Inspector General Act of 1978 is amended by inserting after section 8A the following new sections:

"SPECIFIC PROVISIONS CONCERNING THE NUCLEAR REGULATORY COMMISSION

"SEC. 8B. (a) The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, and shall not delegate such authority to any other officer or employee of the Commission.

"(b) Whenever the Inspector General of the Commission has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General shall report to the Attorney General in accordance with section 4(d), and neither the Chairman nor any other member of the Commission shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any such report.

"(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Commission shall have the authority to perform audits and internal investigations of the activities of the Office of Investigations of the Commission.

"(d) The Director of the Office of Investigations of the Commission shall report to and be under the general supervision of the Chairman and other members of the Commission, but shall not report to, or be subject to supervision by, any other officer or employee of the Commission, except as provided in subsection (c). Neither the Chairman nor any other member of the Commission may prevent or prohibit the Director of the Office of Investigations from initiating, carrying out, or completing any investigation.

"(e) Whenever the Director of the Office of Investigations of the Commission has reasonable grounds to believe there has been a violation of Federal criminal law, the Director shall report such violation to the Attorney General. Neither the Chairman nor any other member of the Commission shall prevent or prohibit the Director from initiating, carrying out, or completing any such report.

"SPECIAL PROVISIONS REGARDING THE DEPARTMENT OF THE TREASURY

"SEC. 8C. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have general oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, the Office of Inspections of the Internal Revenue Service, and the Office of Inspections of the United States Secret Service. The head of each such office shall periodically report to the Inspector General the significant investigative activities currently being carried out by such office.

"(b) Notwithstanding subsection (a), the Inspector General of the Department of the Treasury may conduct the investigation of any officer or employee of such Department if—

"(1) the Secretary of the Treasury or the Deputy Secretary of the Treasury directs the Inspector General to conduct an investigation;

"(2) the investigation concerns senior officers or employees of the Department of the Treasury, including officers appointed by the President, members of the Senior Executive Service, and individuals in positions classified at grade GS–15 of the General Schedule or above; or

"(3) the investigation involves alleged notorious conduct or any other matter which, in the opinion of the Inspector General, is especially sensitive or of departmental significance.

"(c) If the Inspector General of the Department of the Treasury initiates an investigation under subsection (b), and the officer or employee of the Department of the Treasury subject to investigation is employed by or attached to a bureau or service referred to in subsection (a), the Inspector General shall provide the Secretary of the Treasury or the Deputy Secretary of the Treasury and the head of the office of such bureau or service referred to in subsection (a) with written notice that the Inspector General has initiated such an investigation. If the Inspector General issues a notice under the preceding sentence concerning the investigation of an officer or employee, no other investigation shall be initiated into the matter under investigation by the Inspector General and any other investigation of such matter shall cease.".

(d) Section 5315 of title 5, United States Code (as amended by section 3(a) of this Act), is further amended by adding at the end thereof the following new items:

"Inspector General, Department of the Treasury.

"Inspector General, Federal Emergency Management Agency.

"Inspector General, Nuclear Regulatory Commission.

"Inspector General, Office of Personnel Management.".

REQUIREMENTS AND PROTECTIONS FOR AUDIT AND INVESTIGATION UNITS

SEC. 5. (a) The Inspector General Act of 1978 (as amended by section 4(c) of this Act) is further amended by inserting after section 8C the following new section:

"PROTECTIONS AND REQUIREMENTS FOR AUDIT AND INVESTIGATION UNITS AT FEDERAL ENTITIES

"SEC. 8D. (a) An internal audit unit established in a Federal entity shall be responsible for the conduct of audits and investigations of the programs and operations of such entity in accordance with the requirements of this section.

"(b)(1) After the date which is 180 days after the date of enactment of this section, there shall be no more than one internal audit unit in any Federal entity. The head of the Federal entity shall transfer to the internal audit unit established in such entity the offices, units, or other components, or functions, powers or duties thereof, that the head of the Federal entity determines are properly related to the functions of the internal audit unit and would, if so transferred, further the purposes of this section. There shall not be transferred to an internal audit unit any program operating responsibilities.

"(2) If, after the date which is 180 days after the date of enactment of this section, there is a Federal entity in which there is no internal audit unit, the head of the Federal entity shall prepare and transmit to the Comptroller General of the United States and the Director of the Office of Management and Budget a notice which—

"(A) states that such an internal audit unit does not exist in such entity; and

"(B) specifies the action being taken by the head of such entity to ensure that adequate audits are conducted of the programs and operations of such entity.

"(3) If, on October 31 of the year after the year in which the head of a Federal entity transmits a notice required under paragraph (2), or on October 31 of any subsequent year, an internal audit unit does not exist in such entity, the head of such entity shall, on such October 31, transmit to the Comptroller General of the United States and the Director of the Office of Management and Budget a notice which contains the information described in subparagraphs (A) and (B) of such paragraph.

"(c)(1) The internal audit unit director shall be appointed by the head the Federal entity in accordance with the applicable laws and regulations governing appointments within the Federal entity.

"(2) Each internal audit unit director shall report to and be under the general supervision of the head of the Federal entity or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such Federal entity. Neither the head of the Federal entity nor the officer next in rank below such head shall prevent or prohibit the internal audit unit director from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

"(d) If an internal audit unit director is removed from office or is involuntarily transferred to another position or location, the head of the Federal entity shall promptly communicate the reasons for any such removal or involuntary transfer to both Houses of Congress.

"(e)(1) The Chief Postal Inspector of the United States Postal Service shall be the internal audit unit director of the United States Postal Service, and shall be appointed by, report to, and be under the general supervision of the Postmaster General. The Chief Postal Inspector may be removed from office or involuntarily transferred to another position or location if the Postmaster General issues a written order stating the reason for such action and such order is ratified by a two-thirds vote of the Governors of the United States Postal Service. If the Chief Postal Inspector is removed or transferred in accordance with this subsection, the Postmaster General shall promptly notify both Houses of Congress of the reasons for such removal or transfer.

"(2) For purposes of paragraph (1), the term 'Governors' has the same meaning as in section 102(3) of title 39, United States Code.

"(f) Sections 4, 5, 6, and 7 of this Act shall be applied to each internal audit unit, internal audit unit director, Federal entity, and head of the Federal entity (as such terms are defined in subsection (g)) by substituting—

"(1) 'internal audit unit director' for 'Inspector General';

"(2) 'Federal entity' for 'establishment';

"(3) 'internal audit unit' for 'Office'; and

"(4) 'head of the Federal entity' for 'head of the establishment'.

"(g) As used in this section—

"(1) the term 'Federal entity' means an agency (as defined in section 552(e) of title 5, United States Code), other than (A) an establishment (as defined in section 11(2) of this Act) or part of an establishment, (B) the Executive Office of the President, (C) the agency referred to in section 5102(a)(1)(v) of title 5, United States Code, (D) the General Accounting Office, (E) the Department of Justice, or (F) any entity in the judicial or legislative branches of the Government (including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

"(2) the term 'head of the Federal entity' means the chief executive officer of a Federal entity;

"(3) the term 'internal audit unit' means a component of a Federal entity which carries out audits or investigations, or both, of the programs and operations of such entity, but does not include a component that carries out audits or investigations as an integral part of the conduct of the programs and operations of such entity; and

"(4) the term 'internal audit unit director' means the head of an internal audit unit.".

(b) Section 410(b) of title 39, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (6);

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon;

(3) by striking out "The" in paragraph (8) and inserting in lieu thereof "the";

(4) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon and "and"; and

(5) by adding at the end thereof the following new paragraph:

"(9) the provisions of section 8D of the Inspector General Act of 1978.".

PROVISIONS TO ENSURE UNIFORMITY AND RELIABILITY OF INSPECTOR GENERAL REPORTS

SEC. 6. (a) Section 5(a) of the Inspector General Act of 1978 is amended—

(1) by striking out "and" at the end of paragraph (5); and

(2) by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) a listing of each audit report issued by the Office during the reporting period and the amounts of ineligible and unsupported costs in each such report, together with a summary of the significant reports;

"(7) a detailed statistical analysis of audit reports, depicting in tables arranged by audit status information concerning—

"(A) the number of audit reports in each audit status;

"(B) the number of such reports for which an audit determination was not made within 6 months of the date of issuance of such reports; and

"(C) the amounts of ineligible costs, ineligible costs that were disallowed, unsupported costs, and unsupported costs that were disallowed;

"(8) a summary of each significant audit report for which a determination was not made within 6 months after the date of issuance of such report and an explanation of the reason such determination was not made;

"(9) a description of, and explanation of the reasons for, any significant revised audit determinations made during the reporting period; and

"(10) information concerning any significant audit determination with which the Inspector General is in disagreement.".

(b) Section 5 of such Act is further amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e)(1) The head of each establishment shall, not later than April 30 and October 31 of each year, prepare semiannual reports listing each audit report made by that establishment's Office of Inspector General which was not resolved within one year after the date on which an audit determination was made on such report. Such reports shall include—

"(A) an explanation of the reason such audit was not resolved; and

"(B) the amount of disallowed costs that are under administrative or judicial appeal and the amount of disallowed costs returned or offset by the government.

"(2) The semiannual reports of the head of each establishment under this subsection shall be transmitted by such head to the appropriate committees and subcommittees of Congress not later than April 30 and October 31 of each year, together with a report by the Office of Inspector General of the establishment containing any comments such Office deems appropriate.

"(3) Within sixty days after the transmission of the semiannual reports of each establishment head under this subsection to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.".

(c) Section 5 of such Act is further amended by adding at the end thereof the following new subsection:

"(g) As used in this section—

"(1) the term 'ineligible cost' means an incurred cost that is questioned by the Office of Inspector General because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

"(2) the term 'unsupported cost' means an incurred cost that is questioned by the Office of Inspector General because the Office found that, at the time of the audit, such cost was not supported by adequate documentation;

"(3) the term 'disallowed cost' means an ineligible cost or unsupported cost that the management of an establishment has concluded, in an audit determination, should not be charged to the Federal Government;

"(4) the term 'audit determination' means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a written final decision by management concerning its response, including corrective actions concluded to be necessary, to such findings and recommendations;

"(5) the term 'audit resolution' means the completion of all corrective actions that the management of an establishment has concluded, in an audit determination, are necessary with respect to the findings and recommendations included in an audit report, and, in the event that the management of an establishment concludes no corrective action is necessary, 'audit resolution' occurs when an audit determination has been reached; and

"(6) the term 'audit status' includes the following four categories:

"(A) audits for which the audit report was issued before the reporting period and for which—

"(i) the audit determination was made before or during such period; and

"(ii) the audit determination was not made by the end of such period; and

"(B) audits for which the audit report was issued during the reporting period and for which—

"(i) the audit determination was made during such period; and

"(ii) the audit determination was not made by the end of such period.".

(d) Section 3512(b)(2) of title 31, United States Code, is amended by adding at the end thereof the following: "Such standards shall include (A) a definition of audit resolution consistent with section 5(g)(5) of the Inspector General Act of 1978, and (B) a standard to ensure that an audit determination will be made on each audit report within 6 months after the issuance of such report, in the case of an audit performed by a Federal auditor, and within 6 months after receipt by the executive agency responsible for the program concerned, in the case of each audit performed by a non-Federal auditor. No order, circular, or directive prescribed by the Director of the Office of Management and Budget shall include an inconsistent definition or standard with respect to audit resolution.".

OATH ADMINISTRATION AUTHORITY

SEC. 7. Section 6(a) of the Inspector General Act of 1978 is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;".

APPROPRIATION ACCOUNTS

SEC. 8. Section 1105(a)(25) of title 31, United States Code, is amended to read as follows:

"(25) a separate appropriation account for appropriations for each Office of Inspector General established by the Inspector General Act of 1978.".

PREPARED STATEMENT OF LANDO W. ZECH, JR.

Mr. Chairman, Members of the Committee, my fellow Commissioners and I are pleased to appear before you today to discuss S. 908, the "Inspector General Act Amendments of 1987", as it relates to the Nuclear Regulatory Commission.

NRC Inspector General

S. 908 would add the NRC, along with several other agencies, to the list of agencies and departments covered by the Inspector General Act of 1978. This would be accomplished essentially by transferring the functions of NRC's present Office of Inspector and Auditor to a newly established statutory Office of Inspector General in the NRC.

It is our understanding that the NRC would be the first independent agency and the first agency with a Commission form to be brought within the scope of the Act. I believe it would also become, if the legislation is enacted, one of the smallest agencies in terms of budget to be given a statutory Inspector General. For these reasons alone, it is right for the Committee to give careful attention to the effect of this proposal, and we, as Commissioners, appreciate this opportunity to present our views.

Let me say that none of us wish to quarrel over the basic concept of an Inspector General. The need for an independent and objective internal investigative and audit unit within the NRC was recognized at the inception of the agency in 1975 when the first Commissioners established the present

Office of Inspector and Auditor (OIA). The Commission relies on the integrity of its personnel. The functions of OIA are to assure effectiveness, efficiency and integrity in all NRC operations. For the past twelve years, this office has performed the essential functions of an IG with competence and without interference from the Commission.

The bill before you would not appreciably change the mission of OIA as it currently exists. By bringing OIA under the Inspector General Act, there would be modifications to its authority and duties, including some, such as the requirements to review proposed legislation affecting the agency and to report to Congress semi-annually, that would be additional burdens for a small office. The principal change, however, would be to make the OIA Director, or Inspector General as it would become, subject to appointment and removal by the President, rather than by the Commission.

This may appear to be a small change but it is a change which merits some reflection before the Congress acts to extend for the first time what may be a perfectly sound concept within the confines of the Executive Branch to the somewhat different environment of a small, independent regulatory commission like the NRC.

We have not one but five independent officials acting jointly to manage the agency and to act in the public interest. We are ourselves Presidentially appointed and confirmed by the Senate. Our licensing processes operate in an open and highly charged environment in which the staff's work-product is tested and retested before hearing boards, appeal boards, the Advisory

Committee on Reactor Safeguards and the Commission itself. Under the circumstances, it is difficult for us to see how providing the Commission with an IG subject to Presidential removal on demand would better assure effectiveness, efficiency and integrity in the NRC's operations.

Office of Investigations

Congress entrusted the Nuclear Regulatory Commission with regulating the commercial uses of nuclear energy. In brief, our mission is to protect the public health and safety, the common defense and security, and the environment. In keeping with that mission, the Commission expects integrity in its licensees, their employees, and others in the regulated industry. The Commission does not want persons who intentionally violate Commission regulations and license conditions, falsify records, lie, or otherwise manifest serious deficiencies of character to handle hazardous nuclear materials or to operate nuclear power plants.

Until about five years ago, the Commission had no special office charged with investigating licensee wrong-doing of this type. In the early years of the NRC, the responsibility for investigating wrongdoing rested with our Office of Inspection and Enforcement, which had a limited staff of investigators to assist the safety inspectors pursuing potential wrongdoing issues. Evidence of wrongdoing is considered by the Commission in making its licensing and civil enforcement decisions. When the evidence also indicated potential criminal wrong-doing on the part of licensees or others, it was referred to OIA, the NRC office then solely responsible for all criminal referrals, for referral to the Department of Justice.

For a variety of reasons, the Commission decided that this organization was inadequate and in 1982 created an Office of Investigations (OI), staffed by trained investigators, to investigate wrongdoing by licensees or others in the regulated industry and thereby assist the Commission in making licensing and enforcement decisions. If these investigations also indicated the possibility of criminal misconduct, OI would make appropriate referrals to the Department of Justice. As a result of these changes, significantly more attention is devoted to activities involving wrongdoing.

It is important to understand the relationship of OI activities to the fundamental health and safety mission of the NRC. The Kemeny Commission, as well as other studies that followed the accident of TMI, concluded that the NRC had not been devoting sufficient attention to the adequacy of operators and management of nuclear facilities. Many changes were made to enhance the qualification and training of people through the regulatory process. In addition, it was believed necessary to strengthen the NRC's ability to investigate actions of people (non-NRC employees) who may have participated in or condoned improper behavior. Such improper behavior can have a significant impact on safe operation of nuclear facilities.

Timely and objective investigations are important to the regulatory process as part of day to day safety oversight. We therefore do not support any legislation to modify this important activity. Oversight by the Commission is sufficient to assure that OI activities continue to provide results needed for conduct of agency business. We must in all candor note that the Commission is concerned with the management of the investigative process, especially to assure that attention is given to the matters of highest importance and to the timeliness of completion.

S. 908 includes specific language relating to the Commission's Office of Investigations. It would make it a statutory requirement that OI report to and be under the general supervision of the Commission itself. This is already the agency practice. The bill also includes language to prevent the Commission from interfering in the initiation, carrying out, or completion of any investigation by OI. Apparently the Director, OI would still be subject to appointment and removal by the Commission, not the President.

The Commission objects to these provisions. First, we believe that legislation affecting the manner and ability of the Commission to carry out its statutory mission ought to be considered as amendments to the Atomic Energy Act or to the Energy Reorganization Act and not as isolated amendments to an unrelated statute. Second, we believe that the provisions themselves are objectionable on their merits.

The requirement for OI to report to the Commission is essentially an attempt to resolve once and for all by statute what has been a matter of debate since OI was created -- whether OI should report to the Commission or to the Executive Director for Operations (the EDO), who supervises the rest of the regulatory staff. The Commission believes that OI's independence and usefulness can best be preserved if it remains a Commission-level office. However, we believe it should be our management prerogative to change such arrangements for this and other offices if we feel necessary without having to come to Congress to do so.

Of greater concern is the language which, on the one hand, gives the Commission general supervisory powers over OI while, on the other hand, effectively taking them away. This language seems to be rooted in misconceptions about OI's purpose and the Commission's statutory role over OI.

The proposal may stem from a misconception that the Commission routinely interferes with OI investigations or conclusions. In point of fact, the Commission has never prohibited or attempted to prohibit OI from carrying out or completing any investigation or from referring any violation of criminal law to the Department of Justice. Criminal referrals to Justice are reviewed by the Office of the General Counsel to ensure that OI has identified the appropriate statutes, regulations or other requirements that form the basis for a criminal violation. This is particularly important if the alleged violation stems from the Atomic Energy Act, for which we have particular expertise. The process of referral is a matter of ongoing discussion with the Department of Justice.

The proposal is also ill-conceived if the intent is to suggest that the mission of OI is somehow independent of or greater than the mission of the

NRC itself. The fact is OI was created to serve the NRC's overall mission -- to protect the public health and safety, the common defense and security and the environment. As long as the NRC operates in a world of constraints -- both of time and of resources -- it will be necessary for the Commission to make judgments about priorities among competing interests. While the Commission has made a conscientious effort not to interfere directly in OI investigations, it has established a threshold for initiating and terminating investigations and criteria for establishing priorities among them. We reserve the right to take appropriate supervisory action if our guidelines are not followed. Denying us such authority would seriously diminish the value of OI and, we believe, adversely affect our ability to carry out our statutory responsibilities.

Mr. Chairman, that completes my prepared statement.

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR SASSER

Question 1. Scepticism about the NRC is really at a very high level. It's directly related in my judgment to scepticism about nuclear power in general. But it is also related to the performance of the NRC.

I believe that there is a feeling that NRC has been politicized—that there is a tendency for NRC to be more of an advocate of the nuclear industry rather than a regulator of the industry. Let me give you an example of what I mean. The NRC should be providing national guidance on crucial nuclear questions. I suppose that one of the most controversial issues confronting the entire nuclear industry is the question of high-level waste storage and disposal. Nowhere is there a better example of a dispute in which NRC could offer productive information and counsel. And yet on a very basic question—the need for a monitored retrievable storage system—you have abdicated your responsibility altogether. Can you tell me why the NRC has refused, in apparent defiance of the Nuclear Waste Policy Act, to provide a detailed assessment of the need for an MRS?

Answer. The Nuclear Waste Policy Act (NWPA) requires the Department of Energy (DOE) to consult with the Nuclear Regulatory Commission (NRC) and to submit NRC comments on the MRS proposal to the Congress at the time the DOE proposal is submitted. Comments were provided to DOE on February 5, 1986.

As we understand the NWPA, the Congress left it for NRC to decide which particular aspects of a DOE MRS proposal warrant NRC comment. In examining the DOE proposal, NRC decided that its most useful role would be to focus its comments on subjects falling within its later licensing responsibility. In preparing our comments, we regarded the matter of need as primarily a business decision within the overall waste management system by which DOE intends to implement the NWPA. We did not view the Mrs as needed for protection of the public health and safety.

The proposal was therefore examined from the perspective of the licensability of the facility if authorized by Congress, specifically from the standpoint of its design adequacy to protect the public health and safety. The NRC reviewed the DOE evaluation of need for the MRS but, in keeping with the focus of its comments, assumed a neutral posture.

Question 2. Do you not believe that an assessment of need is important if we are to have a reasoned, consistent policy concerning the disposition of our nuclear wastes?

Answer. Yes, the NRC believes that an assessment of need for a Monitored Retrievable Storage (MRS) facility is important. We believe there are attractive benefits, both operational and regulatory, to be gained by providing an MRS as part of an integrated high-level waste disposal system. These benefits are worthy of serious consideration even if an MRS is not essential for the protection of the public health and safety. Examples of operational benefits derived from an MRS integrated into the high-level waste disposal system include:

Flexibility for the DOE waste management system by decoupling the repository from the reactors and reactor sites;

Simplification of the surface facility operations at the respository;

A firmer base for utilities to plan for their fuel storage requirements;

Early planning and focus for the DOE transportation system.

In addition to the operational benefits, an MRS presents certain regulatory benefits, particularly with respect to resource expenditures. Utilities are taking steps to handle and store more spent fuel at one or more of their reactor sites. Two utilities, which own multiple reactor sites, already have been licensed to use dry storage of spent fuel. These are in effect small local MRS facilities. A DOE MRS, as proposed, would permit:

Fewer designs for handling and storage to be reviewed, licensed and constructed;

Fewer sites and methods for spent fuel rod consolidation and packaging;

Fewer surveillance demands and more focused inspection;

A greater degree of quality assurance with this simplicity.

The staff also examined alternatives to the MRS considered by DOE which seem to have neither the operational nor regulatory advantages of the MRS as presently contemplated. For example, the use of the MRS as a backup or near-term alternative to a respository would accrue fewer of the benefits and most of the costs when compared with the MRS as an integrated step in the system for high-level waste disposal. Should MRS not be authorized, all packaging and storage operations would then be carried out at reactor sites and the respository. While it is technically feasible to safely store all fuel at reactor sites until a repository is ready under its current schedule, additional regulatory and operational benefits identified in the previous paragraphs would not be realized.

In conclusion, while there are operational and regulatory benefits to be gained from the MRS as part of an integrated system for high-level waste disposal, they are not essential for safety. As MRS holds potential for providing management flexibility for addressing and responding to the institutional complexities of the waste management system.

The Commission believes the question of need mainly reduces to economic considerations and the role the MRS might eventually play in reaching a final solution to the problem of high-level waste disposal. Although we recognize the regulatory benefits associated with an MRS, these policy issues are best addressed by DOE and elected officials who provide the impetus to the program rather than the NRC.

Question 3. Commissioners Bernthal and Asselstine have indicated that they are in favor of an Inspector General. Evidently, the other Commissioners are not in favor of the concept. I would like to ask the Chairman of the NRC, whether in light of today's hearings, the Commissioner will now take the matter under further advisement. Will the Commission at a later date review S. 908 and provide the Committee with a Commission decision as to whether they will back or oppose an Inspector General for the Nuclear Regulatory Commission?

Answer. S. 908 would establish an Inspector General within the NRC and make the Commission's Office for Investigations a statutory office with a great degree of independence from the Commission.

The Commission believes creation of an Inspector General is unnecessary, and strongly opposes efforts to make the Office of Investigations independent of the Commission. In our opening statement, the Commission indicated that it does not "wish to quarrel over the basic concept of an Inspector General." However, a majority of the Commission believes that a non-statutory Office of Inspector and Auditor (OIA) fulfills this function (internal investigations) for the NRC. As an independent regulatory agency, with five Commissioners who are appointed by the President and confirmed by the Senate, the NRC does not, in the opinion of the Commission majority, require an Inspector General as proposed by the bill. The current OIA organizational structure and agency procedures provide the necessary independence that the internal audit and investigation unit requires.

The bill also would establish a statutory Office of Investigations (OI) which is involved in external (licensee and others) investigations. The Commission is concerned that the provision, "neither the Chairman or the Commission may prevent or prohibit the Director, Office of Investigations for initiating, carrying out, or completing any investigation," could restrain the Commission from exercising supervisory control and therefore interfere with our ability to carry out our safety responsibilities for the protection of the public health and safety.

The Commission must rely on prompt and complete investigations of wrondoing by licensees. However, the Commission must retain legitimate supervisory oversight and direction in determining which allegations have safety significance that should be pursued by OI and what priority each should have, as well as which allegations concern non-regulatory criminal violations and should be turned over to other appropriate investigative authorities. The Commission has already established OI as a Commission level office. As a result, OI already is independent of the rest of the agency's regulatory line functions and no changes to OI are recommended.

In summary, while the Commission does not wish to quarrel over the basic concept of an Inspector General, we believe that a non-statutory OIA fulfills this function for the NRC. However, we believe that the bill, in the case of OI, could interfere with our ability to carry out our safety responsibilities and we strongly oppose the OI provisions.

Commissioner Bernthal believes the provisions of S. 908 would have little practical effect on the relations between OI and the Commission. Commissioner Bernthal has stated on the record that he has no objection to establishing an independent IG, and that indeed it would ease the burden of the Commission. He does not believe, however, that it is a step necessary for the continued integrity and sound management of the Agency.

Question 4. Let me ask another question along the same vein. Has the Commission studied in some detail the operations of Inspector Generals in other agencies? Has the staff of the Commission, especially that of the Executive Director for Operations, provided Commission members with materials that provide an objective evaluation of the Inspector General for the Nuclear Regulatory Commission.

Answer. The Commission's views on the need for an Inspector General are not based on a specific review of the operations of Inspector Generals at other federal agencies. Our position is based on the Commission's assessment of our own management needs.

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR HEINZ

Question 1. With regard to the cold shutdown of the Peach Bottom Nuclear Power Plant, please describe from the beginning the specific steps involved in the NRC's inquiry, together with the date of each step and the cause for taking such a step.

Answer. During 1985 and 1986 the NRC staff monitored Peach Bottom closely due to the utility's performance. There had been a number of escalated enforcement actions and, as a result of the declining trend evidenced in the 1986 SALP, a diagnostic team inspection was performed in June 1986. That inspection concluded that substantial overall improvements in performance were necessary. The chronology of steps beginning with an anonymous phone call and leading to the cold shutdown of the Peach Bottom Nuclear Power Plant follows.

CHRONOLOGY

March 24, 1987:	
8:05 a.m	Call to Region I from Headquarters Duty Office stating that he had received anonymous call about sleeping at a power plant. The caller would not identify plant.
Approximately 9:30 a.m	Call from alleger. After lengthly discussion, determined plant was Peach Bottom.
1:30 p.m	Meeting in Regional Administrator's office concluded that 24 hour per day site coverage would be initiated while investigating allegation.
3:00 p.m	Began 24 hour per day site coverage with random frequent visits to the control room.
March 25, 1987:	
Morning	NRC investigator and inspector interviewed alleger. Alleger was determined to be credible.
Afternoon	Began "essentially full time" coveage of control room activities.
March 26, 1987:	
8:30 a.m	Interviewed alleger.
2:20 p.m	Meeting in Regional Administrator's office, at which it was decided to interview additional individuals beginning March 27 at the site to verify alleger's assertions.
8:00 p.m	NRC management called PECO to obtain space at Peach Bottom beginning March 27 to conduc interviews.
March 27, 1987: Morning	NRC investigators on site conducting interviews. NRC management on site.
March 28, 1987: Morning	NRC management toured site. NRC investigators onsite conducting interviews.
March 29, 1987	NRC management toured site. NRC investigators on site conducting interviews.
March 30, 1987: 10:00 a.m	Meeting in Regional Administrator's Office regarding results of investigation to date. Decision made to issue order. Reasons for order are contained in the order.
March 31, 1987:	
11:00 a.m	Regional Administrator and Staff met with PECO to issue order.
11:40 a.m	Unit 3 began shutdown. Unit 2 already in cold shutdown. NRC Management on site to assist inspector.
11:35 p.m	Unit 3 in cold shutdown.
April 2, 1987	PECO executives meet with Regional Administrator regarding initial actions in respeonse to Peach Bottom order.
	Terminated 24 hour coverage.
April 3, 1987: 5:00 p.m	Call from (PECO) regarding initial actions in response to Peach Bottom order.

CHRONOLOGY—Continued

April 6, 1987	PECO holds press conference to describe initial actions. Issues letter to NRC responding to Order as required.
April 9, 1987	Exit meeting at Peach Bottom plant for Special Inspection 87-10.
April 10, 1987	Regional Administrator and staff brief ACRS and Commission.
April 14, 1987	NRC staff meet with State of Maryland regarding Peach Bottom.
May 5, 1987	PECO senior management meets with Deputy Executive Director for Operations & Regional Administrator in Region I office on status of PECO's investigation.
May 6, 1987	NRC staff meets with Commonwealth of Pennsylvania regarding status of Peach Bottom.
May 12, 1987	Special Inspection Report 87-10 issued.
May 15, 1987	NRC staff meets with PECO at site to discuss status of Peach Bottom with regard to pending fuel load activities for Unit 2.
May 19, 1987	Conference call with PECO regarding status and plan for fuel load of Unit 2.
April-May 1987	Ongoing NRC interviews with contractor & PECO management.

Question 2. Were any allegations of problems received in addition to the June 1985, allegation of control room problems? If so, what was the substance of such allegation(s) and when were they received by the NRC?

Answer. During a Region I inspection at the Peach Bottom facility on June 10, 1985, one of our inspectors identified an individual who appeared to be inattentive to his duties. As a result of this observation, a special inspection was conducted and subsequently NRC Region I staff held an enforcement conference with the utility. There were no allegations regarding control room conduct associated with the June 1985 event, however, and NRC has received no allegations associated with operator attentiveness other than the recent allegation which led to the shutdown order.

(Question 2 and 3 are answered under the assumption that they are directed toward allegations of control room problems. Twenty-six allegations are recorded as having been received on other matters since 1982. They can be made available should the Committee desire to broaden the question).

Question 3. Further describe what action, if any, was taken as a result of any allegation, including that of June 1985.

Answer. As stated above, there were no allegations regarding control room conduct associated with the June 1985 event. The attached inspection report, report of the enforcement conference and the utility's response describe the NRC's and Philadelphia Electric Company's actions in this matter.

(Question 2 and 3 are answered under the assumption that they are directed toward allegations of control room problems. Twenty-six allegations are recorded as having been received on other matters since 1982. They can be made available should the Committee desire to broaden the question).

STATEMENT BY COMMISSIONER JAMES K. ASSELSTINE
U.S. NUCLEAR REGULATORY COMMISSION

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

APRIL 9, 1987

Mr. Chairman, I would like to add a few comments to the Commission's testimony. In general, I support S. 908. I favor legislation to create an independent, statutory inspector general for the NRC. I also support the goal of subsections (d) and (e) of section 8B of the bill, to protect the independence of the Commission's Office of Investigations. However, the provisions which pertain to OI may not be sufficient, as written, to accomplish that goal. I will outline later in my testimony some additional provisions the Committee may want to consider.

I support the creation of a statutory Inspector General (IG) for the NRC. The function of an inspector general is to serve as a watchdog for the agency to help ensure that the mission of the agency is carried out effectively and efficiently. The mere existence of an independent watchdog also helps to assure the public of the integrity of an agency's program. In addition, reports from an inspector general can be a useful tool for agency management. They provide an objective, independent look at how the agency functions and make suggestions for improvement. However, in order to be an effective watchdog, the inspector general must be credible; that is, the office must be competent, it must be independent, and it must have the highest integrity. An IG's reports must be respected as being thoughtful, thorough and complete. It is difficult to produce change in an organization based on an IG report that one can easily dismiss as inadequate. The IG office must also be above reproach. There must be no question about the office's integrity or its freedom to investigate and report factually about anyone or anything in the organization. There must not be even an appearance of a lack of integrity or independence or an IG's report loses moral force.

The NRC is in need of a credible inspector general office. For a variety of reasons, the office which now performs that function, the Office of Inspector and Auditor (OIA), lacks the necessary credibility. Just one example of this is a case in which I recently had great difficulty in convincing an agency employee to report his concerns about agency managers to OIA. He and others who approached me with concerns about the performance of certain senior NRC staff managers said that they did not trust that office to do an adequate job. I should note that this lack of credibility is not simply a problem with OIA's current management; rather, OIA's lack of credibility goes back over several years. In my view, creating an independent, statutory inspector general could help to restore credibility to the agency's IG function. This will help the Commission to better manage the agency, and it will help to ensure public trust in the NRC. For these reasons, I support that portion of S. 908 which creates an independent, statutory inspector general for the NRC.

S. 908 also contains provisions pertaining to the NRC's Office of Investigations (OI). The bill provides that OI shall report to the "Chairman and other members of the Commission" and shall not be subject to supervision by other employees of the Commission. The bill also prevents the Commission from prohibiting OI from "initiating, carrying out, or completing" an investigation or a criminal referral to the Department of Justice.

In general, I support efforts to protect the independence of OI. The credibility of the NRC's Office of Investigations is just as important as the credibility of its IG. The NRC does not have the resources to do more than audit licensees' programs. We must be sure, therefore, that the licensees are not purposely circumventing our regulations or failing to report significant information necessary for the NRC to make informed decisions. By investigating and providing the information necessary to support enforcement action when a licensee willfully violates NRC regulations, OI's efforts help to ensure the integrity of licensees' programs so that the agency can rely on the licensees to carry out their responsibilities. Further, there is a direct connection between the respect of the public for the NRC's investigatory efforts and their belief in the integrity of the agency's regulatory process. A strong, competent and independent OI helps to ensure that people believe the agency is truly interested in uncovering wrongdoing and in enforcing its regulations. This in turn leads to enhanced trust in the NRC to protect the public health and safety.

Efforts to make the office more independent and to protect the integrity of OI's investigations can only help to ensure that OI can continue to perform this vital function. However, I am not sure that subsections (d) and (e) of section 88 are sufficient to accomplish that goal. First, I agree with the Commission's testimony that the Inspector General statute may not be the appropriate place for provisions regarding OI; the intent of the bill does not appear to be to make OI a part of the IG office. Second, while it is useful to require that OI report to the Commission, that may not be enough to ensure OI's independence. The bill does not, for example, require that there be an Office of Investigation; it does not amend the Energy Reorganization Act to make the office a statutory office. In addition, the bill does not require that the office be provided with adequate resources, and it does not require that the NRC staff refer matters to OI. While the bill prohibits interference in OI investigations, it does not establish the scope of OI's authority to investigate. The bill states that the Commission cannot prevent OI from beginning an investigation, but it does not prohibit the agency from circumscribing generally what OI may investigate. Thus, if the intent of the subsections (d) and (e) is to protect the independence of the Office of Investigations, the bill may not, without additions, accomplish that goal.

The Committee may want to consider some additional provisions which might help to better assure OI's independence. One such provision would be an amendment to the Energy Reorganization Act to make OI a statutory office reporting to the Commission. This would ensure the existence of the office as a Commission-level office. The Committee may also want to consider setting out in the bill the scope of OI's authority to investigate. That would prevent attempts to limit the circumstances under which OI may conduct an investigation. Another useful provision would be a requirement that NRC employees refer all matters within OI's authority to OI. And, it might also be useful to require that OI formally notify the Commission of the resources it needs to carry out its mission and that the Commission formally respond to this request, with notifications to the appropriate authorizing and appropriating committees of the Congress. An alternative to amending the Energy Reorganization Act would be to make OI a part of the statutory inspector general office and to include provisions which specifically set out the scope of OI's authority to investigate.

In conclusion, I support the concepts embodied in S. 908. An Inspector General for the NRC would enhance the agency's credibility by providing an independent watchdog. Further, the goal of subsections (d) and (e), to protect the independence of OI, is a good idea, but I believe that there are some additions to the bill which may help to accomplish that goal more effectively. Thank you.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 18, 1987

The Honorable John Glenn
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Mr. Chairman:

During my testimony before the Government Affairs Committee on April 9, 1987, I indicated that I supported the establishment of a statutory inspector general for the NRC, and that my staff and I were in the process of preparing a paper reflecting the views of the Office of Investigations regarding that office. You stated that such a paper would be welcome and included in the Hearing Record. This is that paper.

The Office of Investigations supports and endorses the provisions of S.908 that would provide for the establishment of a statutory Office of Inspector General in the NRC; however, we believe that S.908 requires some modification if it is to assure the integrity and independence of the NRC investigative program. Although we appreciate the intent of those provisions of S.908 which would provide certain statutory protections to the Office of Investigations, my entire staff and I strongly believe that the most effective and expedient way to achieve the objectives of this legislation would be to combine the personnel and functions of the existing Office of Investigations and Office of Inspector and Auditor within a statutory NRC Office of Inspector General. Thus, we urge that S.908 be modified in the following manner:

1. Change Section 4(a)(6)(P) to read:

   "(P) of the Nuclear Regulatory Commission, the offices of that commission referred to as the 'Office of Inspector and Auditor' and the 'Office of Investigations'";

2. Delete the following subsections of Section 8B ("Specific Provisions Concerning the Nuclear Regulatory Commission"): 8B(c), 8B(d), and 8B(e).

We recognize that combining both the external and internal investigative functions of an agency in an office of inspector general, although certainly not without precedent, is not the norm within the inspector general community. Nonetheless, we believe there are compelling reasons to depart from what may be customary in view of the extraordinary importance of the NRC investigative function to the protection of the public health and safety and the common defense and security, coupled with the well-documented problems that have attended the NRC investigative program since the earliest days of the agency. Those of us in the Office of Investigations, some of whom have been with the NRC since 1975, are particularly knowledgeable of the depth and breadth of these programmatic problems. For this reason, we respectfully suggest that our views may be of particular value to the Committee in its deliberations.

In enclosure 1 to this paper, we discuss eight major points in favor of this combined office of inspector general. These points are:

1. IT WOULD PROVIDE STATUTORY INDEPENDENCE AND AUTHORITY FOR THE NRC INVESTIGATIVE PROGRAM.

2. THE CURRENT BIFURCATED NRC INVESTIGATIVE PROGRAM FAILS TO DEAL EFFICIENTLY AND EFFECTIVELY WITH COMPLEX NRC INVESTIGATIONS.

3. THE INSPECTOR GENERAL ACT OF 1978 DOES NOT DISTINGUISH BETWEEN INTERNAL AND EXTERNAL INVESTIGATIVE FUNCTIONS. RATHER, IT SPEAKS TO IG AUTHORITY REGARDING THE CONDUCT OF INVESTIGATIONS RELATED TO THE "PROGRAMS AND OPERATIONS" OF AN ESTABLISHMENT.

4. OI INVESTIGATIONS ARE PRIMARILY RELATED TO NRC PROGRAMS AND OPERATIONS. THE NRC ITSELF IS THE "VICTIM" OF DELIBERATE VIOLATIONS OF NRC REQUIREMENTS AS SUCH ACTS DEPRIVE NRC OF THE "TOOLS", I.E. ESSENTIAL INFORMATION, THAT IT NEEDS TO PROTECT THE PUBLIC HEALTH AND SAFETY.

5. ANY NRC INVESTIGATIVE FAILURES ARE OF POTENTIALLY GREAT SIGNIFICANCE DUE TO THE PUBLIC HEALTH AND SAFETY IMPORTANCE OF NRC OPERATIONS.

6. THE INVESTIGATIVE PRODUCTS OF THE INSPECTOR GENERAL COULD BE USED TO SUPPORT NRC REGULATORY EFFORTS AS OI INVESTIGATIONS NOW ARE USED EVEN THOUGH OI IS NOT PART OF THE NRC STAFF APPARATUS.

7. COMBINING OI AND OIA WITHIN AN OFFICE OF INSPECTOR GENERAL ENSURES THAT THE NRC INVESTIGATIVE PROGRAM IS STAFFED WITH PROPERLY QUALIFIED INVESTIGATIVE AND MANAGERIAL PERSONNEL.

8. THERE WOULD BE AN ECONOMY OF SCALE IN COMBINING THE OFFICES DUE TO REDUCED OVERHEAD AND TRAVEL.

In sum, it is our belief that the problems associated with the NRC investigative program that were discussed on April 9, would not be remedied by the current provisions of S.908, nor by any other current initiative of which we are aware. It is for this reason that we urge that the proposed NRC Office of Inspector General encompass the functions of both the Office of Investigations and the Office of Inspector and Auditor.

The problems or shortcomings that we are attempting to resolve are endemic and longstanding. They predate the tenure of any particular NRC executive. Thus our recommendations should not be construed as criticism of either current or former members of this Commission. Indeed, it is precisely because these problems have persisted throughout the history of this agency that we feel so strongly about the need for statutory relief. It is encouraging that the Commission has issued its April 20, 1987 public statement of concern and support for the NRC investigative program. We are convinced that the Commission sincerely intends to fix what may be broken. But the issue here is not sincerity; rather, it is a matter of consistency over the long haul. A combined NRC Office of Inspector General should ensure this consistency.

Five years ago, the Commission unanimously established the Office of Investigations in reaction to severe Congressional criticism of the NRC's investigative program. The date of that public announcement was April 20, 1982. As your Hearing established, the professed enthusiasm for such a program waned as the years went by. By ironic coincidence, the Commission finds itself once again issuing a public announcement stating its intention to remedy Congressionally-identified problems in its investigative program five years later to the day -- April 20, 1987. We suggest that the statutory protections that would be afforded the investigative program were it to be combined within an office of inspector general should be sufficient to preclude the need for future announcements of this nature.

Sincerely,

Ben B. Hayes

Ben B. Hayes, Director
Office of Investigations

Enclosure:
As Stated

cc w/encl.:
Sen. William V. Roth, Jr.
Chairman Zech
Commissioner Asselstine
Commissioner Bernthal
Commissioner Carr

OFFICE OF INVESTIGATIONS VIEWS ON THE NEED FOR AND COMPOSITION OF A STATUTORY OFFICE OF INSPECTOR GENERAL FOR THE NRC

The Office of Investigations favors the establishment of a statutory Office of Inspector General for the NRC. We believe that such an office should combine the personnel and functions of the NRC Office of Inspector and Auditor (OIA) and the Office of Investigations (OI). We offer the following statements in support of our position:

1. IT WOULD PROVIDE STATUTORY INDEPENDENCE AND AUTHORITY FOR THE NRC INVESTIGATIVE PROGRAM.

Currently, neither OI nor OIA are statutory offices. Either could be disestablished by a Commission vote. Although an unlikely event regarding the latter, the future of a non-statutory OI is less certain in view of the fact that the Commission has considered placement of OI under the Executive Director for Operations on three occasions. Moreover, the current Executive Director for Operations once proposed in writing that OI be made a part of the Office of Inspection and Enforcement rather than remain a separate office. (The Office of Inspection and Enforcement, a non-statutory office itself, was disestablished by Commission vote effective April 11, 1987.)

Neither OIA nor OI have any authority other than that delegated to them by the Commission. Whereas an inspector general has statutory authority to issue subpoenas or to administer oaths or affirmations, the Directors of OIA and OI must have this authority delegated to them by the Commission which could choose to limit the exercise of this authority. This has in fact happened with OI which must seek Commission review of any proposed subpoenas.

This has also been the case with the referral of criminal matters to the Department of Justice. It is just recently (April 20, 1987) that the Commission elected to allow OI to refer matters to the Department of Justice without mandatory consultation with the NRC Office of General Counsel, and in the case of material false statements, allowing OI to make referrals without consultation with the Commission.

Each of the above concerns would be alleviated if both offices were part of a statutory office of inspector general as the Inspector General Act of 1978 provides clearcut statutory authority and independence.

2. THE CURRENT BIFURCATED NRC INVESTIGATIVE PROGRAM FAILS TO DEAL EFFICIENTLY AND EFFECTIVELY WITH COMPLEX NRC INVESTIGATIONS.

NRC currently has a bifurcated investigative program that is apparently based on the assumption that NRC investigations are either internal (in which case they are OIA jurisdiction) or external (in which case they belong to OI). In fact the distinction between them in practice is blurred.

One of the purposes of an NRC investigation is to identify the causes of the problem that is the focus of the investigation. In some cases, the root cause of the problem may be ineffective regulation by the NRC as well as wrongdoing by a licensee. Any investigation that focusses on only one of these aspects would fail to present a balanced picture regarding the real dimensions of the problem. Yet, this is precisely what happens so long as an artificial distinction is made between internal and external investigations.

On several occasions, OI investigators conducting an "external" investigation have developed or received allegations of NRC misconduct related to the matter being investigated. Typically such information might suggest that NRC employees were aware of the wrongdoing that OI was investigating and helped to conceal the matter from the NRC, or that an NRC employee has lost his or her objectivity. Although OI investigators would document such information and provide it to OIA, this approach presents certain difficulties.

First, it imposes a delay. Such information may arise spontaneously, sometimes because of the rapport the OI investigator has managed to establish with an interviewee. A subsequent interview by an OIA investigator may not be as productive because of the delay caused by the need to contact OIA and for OIA to arrange for an interview. Second, OI investigators feel uneasy developing such information. They fear being accused of having overstepped their authority and having intruded into a matter of OIA jurisdiction. Third, regardless of the degree of cooperation that may exist between the two offices, the chances of a matter "falling through the crack" are far greater than if there were only one NRC office responsible for conducting all investigations.

There are also problems that arise when both offices are investigating matters related to the same facility such as has happened with the Tennessee Valley Authority, Fermi, and Comanche Peak. Licensee employees may be interviewed by investigators from both offices which in itself could create unnecessary confusion and frustration on the part of interviewees who generally are not familiar with the functional distinctions between the two offices. At the same time, there is usually little if any coordination of either interview arrangements or results. Although this may be understandable given the need for OIA to hold employee misconduct information closely, it nonetheless does not make for an integrated or efficient investigative program.

In sum, the NRC investigative program does not lend itself to a neat cleavage between internal and external investigations. As noted above, there is frequently overlapping jurisdiction so long as the NRC investigative program is divided along these lines. Combining OI and OIA within an office of inspector general would provide for a truly integrated investigative program that could deal with the full dimensions of any investigative matter.

3. THE INSPECTOR GENERAL ACT OF 1978 DOES NOT DISTINGUISH BETWEEN INTERNAL AND EXTERNAL INVESTIGATIVE FUNCTIONS. RATHER, IT SPEAKS TO IG AUTHORITY REGARDING THE CONDUCT OF INVESTIGATIONS RELATED TO THE "PROGRAMS AND OPERATIONS" OF AN ESTABLISHMENT.

The Inspector General Act (at § 4) states that the Inspector General has the "duty and responsibility" to, "... conduct, supervise, and coordinate ...investigations relating to the programs and operations of such establishment." The Inspector General Act does not differentiate between internal and external functions. In reality, no Office of Inspector General (OIG) conducts investigations only of agency employees. Rather, they conduct investigations of matters affecting the integrity of agency programs. Thus, considerable office of inspector general investigative effort is directed to instances of fraud against the government, typically, but not invariably, contract fraud. Although one of the purposes of such investigations is the recovery of government monies and the prevention of fraud and waste, the underlying rationale is the protection of agency programs.

For example, the Department of Defense Office of Inspector General conducts investigations of Defense contractors to assure that the products or services provided the government are of sufficient quality that the Department of Defense mission is enhanced rather than degraded. Thus, the primary Department of Defense interest in a case such as substitution of substandard fasteners in Army tanks is not just the waste of government money; it is to ensure that the tanks are safe and can perform as originally designed. Similarly, NASA Office of Inspector General investigations are motivated by a concern that shuttle components are safe rather than merely concentrating on cost overruns. inspectors general of agencies with loan programs (such as HUD, VA. Commerce, EPA, etc.) are concerned that their agency appropriations are being used to further agency (and societal) programs. Dollar recovery is important, but in the context that dollars diverted diminish the effectiveness of agency programs.

There also are some inspectors general (such as Agriculture) whose inspectors general are involved in the investigations of "external" offenses such as Food Stamp violations, fraud in food inspection programs etc. Thus, the NRC combined office Office of Inspector General would not be one of a kind (not that being one of a kind is necessarily a flaw given the nature of the NRC mission).

It should also be noted that OI investigations are primarily fraud investigations. A licensee or other entity is investigated because of an attempt to defraud the NRC. Thus, falsified documents, material false statements, and willful violations of NRC requirements, like the contract frauds investigated by other agency inspectors general, represent an attempt to degrade the efficacy of the NRC regulatory program. Money is almost always a factor in our investigations, but not the theft or diversion of government money per se. Rather, the offenses are motivated by the savings of money - the avoidance of out-of-pocket costs by licensees that attend delay in licensing, replacement costs/ debt service during outages, or costs of backfits, upgrades, or technical fixes. On balance, in form and substance, OI investigations are similar to inspector general investigations. They are also of similar impact on program integrity.

4. OI INVESTIGATIONS ARE PRIMARILY RELATED TO NRC PROGRAMS AND OPERATIONS. THE NRC ITSELF IS THE "VICTIM" OF DELIBERATE VIOLATIONS OF NRC REQUIREMENTS AS SUCH ACTS DEPRIVE NRC OF THE "TOOLS", I.E. ESSENTIAL INFORMATION, THAT IT NEEDS TO PROTECT THE PUBLIC HEALTH AND SAFETY.

Traditional investigative organizations such as the FBI, U.S. Customs, or the U.S. Secret Service conduct investigations of violations of criminal statutes within their jurisdiction. These agencies are not the "victims" of the violations they investigate. A counterfeiter, for example, does not victimize the Secret Service. Secret Service programs are not directly degraded by such criminal activity. In contrast, the NRC is "victimized" by deliberate violations of NRC requirements. When the NRC is deprived of complete and accurate information, as would be the case with falsified records, material false statements, failure to comply with reporting requirements, or even instances of discrimination against employees who report safety concerns, the integrity and efficacy of NRC programs intended to protect the public health and safety are seriously affected. The foregoing examples represent the vast majority of OI investigations.

Finally, there may be occasions when allegations are made against the Office of Inspector General or its personnel. If this were to happen, it would be handled in the same manner the inspectors general in other agencies resolve these matters. Allegations against non-supervisory field personnel are normally investigated by the inspector general using investigators from the headquarters staff. Investigations of headquarters personnel or supervisors would be done by another agency inspector general. Both practices are used in the inspector general community.

5. ANY NRC INVESTIGATIVE FAILURES ARE OF POTENTIALLY GREAT SIGNIFICANCE DUE TO THE PUBLIC HEALTH AND SAFETY IMPORTANCE OF NRC OPERATIONS.

Few if any federal agencies have greater public health and safety responsibilities than the NRC. A regulatory breakdown could set the stage for a nuclear accident that could affect the safety of large segments of the population. As noted in the Commission's press statement of April 20, 1987, the NRC relies on thorough investigations to accomplish its regulatory activities. Any weaknesses in the NRC investigative process could adversely affect the ability of the NRC to fulfill its regulatory responsibilities. Thus, weaknesses or shortcomings in the NRC investigative program could have a direct effect on the public health and safety, common defense and security, or protection of the environment.

Given the foregoing, it is reasonable to conclude that the NRC investigative program is extraordinary if not unique with respect to its direct relationship to the public health and safety. We suggest, then, that it is not unreasonable to structure the NRC investigative program in an extraordinary manner if that is what is needed to assure its integrity and independence. Whether the structure of the NRC investigative program comports with that of other federal agencies is at best a secondary issue.

Inspectors general were created in recognition of the need to assure the integrity of government programs. Based on the record established since the Inspector General Act of 1978 established the first inspectors general in various federal agencies, it is reasonable to conclude that inspectors general are a highly effective way to structure agency investigative programs to ensure program integrity. Given that, it is reasonable to conclude that the inspector general concept would be especially suitable for the protection of NRC program integrity - particularly in view of the safety implications alluded to above.

6. THE INVESTIGATIVE PRODUCTS OF THE INSPECTOR GENERAL COULD BE USED TO SUPPORT NRC REGULATORY EFFORTS AS OI INVESTIGATIONS NOW ARE USED EVEN THOUGH OI IS NOT PART OF THE NRC STAFF APPARATUS.

It has been suggested that if OI were to become part of an office of inspector general, its investigative products could no longer be used by the NRC in support of enforcement actions, licensing actions, or other NRC efforts. That is not correct.

First, it should be noted that inspectors general do work for their agencies, and the bulk of their investigative products are used by the agency heads/program managers to remedy agency or program problems. The inspectors general work for neither the Congress nor OMB. They report to the agency head. The process for appointment of inspectors general and the requirement for reports to Congress help protect the independence of the investigative process, but do not remove any office of inspector general from the primary role of providing investigative support to his or her agency.

Second, even if the office of inspector general were independent of the agency, the investigative support could be the same. This is the situation with the various federal law enforcement agencies that support Department of Justice prosecutors. For example, the Secret Service is not part of the Department of Justice, but cooperates with the Department by providing the requisite investigative support for the prosecution of counterfeiting cases or other matters within Secret Service jurisdiction.

Third, the Office of Investigations currently is independent of its major client, the NRC Staff much in the same way an inspector general would be. Yet OI investigations are conducted in support of the NRC enforcement program which is an NRC Staff function. The Office of Investigations provides its reports of investigation to the Staff which then is responsible for preparing and presenting the enforcement case. The Office of Investigations may assist the Staff when requested, but by and large, the NRC enforcement program has functioned well for almost five years, even though the Office of Investigations has been independent of it. Thus, it is reasonable to assume that an office of inspector general could provide the same degree of investigative support.

7. COMBINING OI AND OIA WITHIN AN OFFICE OF INSPECTOR GENERAL ENSURES THAT THE NRC INVESTIGATIVE PROGRAM IS STAFFED WITH PROPERLY QUALIFIED INVESTIGATIVE AND MANAGERIAL PERSONNEL

If Congress is concerned about preserving the integrity and independence of the Office of Investigations, S.908 leaves a loophole that could allow this independence to be eroded. There is nothing to prevent the replacement of current OI management and/or investigative personnel with other NRC personnel who may lack investigative training or experience, or who may be opposed to the very concept of an independent Office of Investigations. Thus, although the office may appear to be independent on paper, it could be partly or substantially staffed by persons who would cause OI to operate essentially as a part of the NRC Staff.

At the present, not only does the Director of the Office of Investigations serve at the pleasure of the Commission, but he lacks the statutory authority to appoint subordinate investigative or managerial personnel. It is possible, perhaps even likely, that the Office of Investigations could be forced to accept personnel that the Director did not want. Were the Office of Investigations to be part of the Office of Inspector General, the Inspector General would have sole authority to appoint his or her own subordinates.

This is not merely a theoretical concern. There have been several suggestions over the past two years that technical personnel should be assigned to the Office of Investigations. Indeed, at a time when requests for additional qualified investigators were rebuffed, it was made clear that the Commission would approve the transfer of certain technical personnel to OI. On three occasions, the Director of OI was offered the services of certain senior executives without regard to the current OI staffing ceiling. This eventually culminated in the reassignment of a senior executive to OI who lacked an investigative background and whose services had not been sought by the Director.

B. THERE WOULD BE AN ECONOMY OF SCALE IN COMBINING THE OFFICES DUE TO REDUCED OVERHEAD AND TRAVEL.

First, it would be reasonable to assume that there could be a reduction in the number of secretarial positions at the headquarters level. Similarly, operations support functions such as FOIA/PA, personnel, and budget could be consolidated. There could be a reduction in some managerial positions as well. Second, the current OI field structure could provide a field structure for the new Office of Inspector General. This could reduce travel costs significantly as much of travel by OIA investigators is to NRC regional offices. There also would be a cost saving in not having to send two sets of NRC investigators to work related cases at the same facility. As described above, there could be additional cost savings due to the increased efficiency of the investigative process. There would also be the direct savings of reducing the number of investigators traveling to any one location.

STATEMENT OF JULIAN GREENSPUN, ESQ.
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
APRIL 9, 1987

My name is Julian Greenspun. Although I am now in private practice, for the past fifteen years I have held a variety of federal prosecutor positions in the U.S. Department of Justice. From 1979 through 1986, I served as the Deputy Chief of Litigation in the General Litigation section of the Criminal Division. In this position I supervised thirty attorneys who prosecuted criminal violations of regulations promulgated by such agencies as the Nuclear Regulatory Commission (NRC), Mine Safety Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), and many others. I spent a significant portion of this period handling a supervising potential criminal cases related to the commercial nuclear industry, including certain aspects of the Three Mile Island criminal case.

Based on my extensive experience with the NRC, I can unequivocally state that I know of no other regulatory or investigative agency, where senior agency officials have taken as many bizarre and seemingly deliberate actions intended to hamper the investigation and prosecution of individuals and companies in the industry the agency regulates.

I would like to further explain this statement by giving the Committee two observations I have made about NRC. First, the NRC is in too many ways a captive of the industry it regulates. As a result, the agency has discouraged anyone inside the agency from finding wrongdoing on the part of industry representatives. I also believe there has been continuous improper pressure on the Office of Investigations (OI) by both industry and agency officials. Second, the NRC has a history of failed leadership in the Office that handles internal investigations and audits. The Office of Inspector and Auditor (OIA) acts as if it is part of the management "team" rather than an independent "watchdog" for the agency. On more than one occasion, OIA has avoided identifying and recommending corrective action for serious wrongdoing and mismanagement by senior agency officials, while focusing its attention on less important issues.

In my view, S.908, the legislation recently introduced to amend the Inspector General Act of 1978 is absolutely necessary to combat these problems. The NRC would also benefit from additional Congressional Oversight of its programs and activities.

To assist the Committee, I am prepared to discuss several specific cases which I believe demonstrate the

NRC's unseemly protection of the industry from necessary investigations of deliberate wrongdoing. Unfortunately, I cannot reveal all of the details of these cases because some of the information is protected by grand jury secrecy restrictions, and because I have not been able to obtain copies of essential documents I left behind in my Department files to honor these restrictions.

At the outset I can say that on more than one occasion when wrongdoing was under investigation by the Department, senior NRC officials, and perhaps even some Commissioners had ex-parte meetings or discussions concerning the subject matter of the investigation with those under investigation. On at least one occasion, I personally requested that a senior NRC official not meet with the licensee under investigation. Despite my importuning, shortly thereafter the official engaged in a lengthy discussion with the target of the investigation. His action unnecessarily derailed criminal prosecution, a fact which I believe was known to those conducting the meetings.

One example of the NRC's obfuscation of a major criminal violation occurred at the Three Mile Island plant. Furthermore, I believe this violation may have been a contributing factor to the eventual melt-down at that plant. NRC regulations required that if a reactor was losing over one gallon of water per minute, the source of which was unknown, the source of the problem must be found or the reactor shut down. The utility's leak rate tests for the 6 month period prior to the melt-down in March 1979, indicated that the reactor was continually losing more than one gallon of water per minute. However, the operators added water or hydrogen to the reactor, and falsified the computer data to create acceptable leak rates on paper. In addition, the results of "bad" tests were destroyed. The NRC inspector, who also took part in NRC's post melt-down investigation, was aware of these unlawful actions at the time they occurred but failed to report them as violations. Needless to say, the plant was not shut down until the disastrous melt-down occurred.

After the melt-down, one honest TMI employee spoke at length to NRC employees on at least two occasions about the unlawful falsification and disposal of the leak rate documents. This information was not passed on to the Justice Department. In fact, the NRC's initial investigation of TMI failed to even mention this information. See NUREG-0600, "Investigation Into the March 28, 1979 Three Mile Island Accident", By Office of Inspection and Enforcement.) Only when this "whistle-blowing" employee was scheduled to appear on television did the NRC report these allegations to the Justice Department. Subsequently, the allegations were verified by the independent analysis of experts and the testimony of an NRC inspector at the site.

Despite this, certain senior NRC officials continued to insist that the utility's conduct at TMI was acceptable. They adopted the utility's position that (1) nothing prohibited the addition of water to the reactor, (2) there was nothing wrong with the destruction of "bad" leak rate tests, and (3) it was difficult to tell a "good" test from a "bad" test. It is my belief that these officials actively misled and even lied to the Justice Department in the TMI case. Perhaps most revealing, in a meeting with myself and other prosecutors, Mr. Stello, now Executive Director of the NRC, said that an investigation at TMI would be bad for the operators morale, and: "Nobody is going to tell me how to treat my licensees." It is that attitude which must be dispensed with through changes such as this legislation.

The end result of the TMI matter, of course, was the criminal conviction of the utility for violating NRC regulations. See United States of America v. Metropolitan Edison Company, CR. No. 83-00188. To demonstrate to the Committee the depth of emotion felt by other Justice Department officials I will refer to the statement of U.S. Attorney David P. Queen (now an Assistant Secretary of the Treasury):

> "This notion that the NRC investigation -- whatever on earth that is -- is a "far superior vehicle to these proceedings today" is utter poppycock. I had not intended to address this issue, but I cannot stand silent and allow the charade that has been carried on by the NRC to be treated as anything but that.
>
> We are the only institution since this accident occurred that has made the slighest damn effort to see this thing through to a conclusion. The NRC has not conducted any meaningful investigation; to this day has used as a pretext the fact that the Grand Jury was conducting an investigation as a vehicle to avoid addressing its responsibilities.
>
> As recently as six weeks ago, the NRC voted three to two to ignore what we are doing here today. When the United States Department of Justice brought this indictment, when I got sworn into office, this investigation was virtually dormant and had been for some time.

I didn't see the NRC hustling to clean up the loose ends and to make it known to the public just what went on in 1978 or 1979. We...made a Herculean effort to get to the bottom of the facts, something that was not done by the Nuclear Regulatory Commission.

As recently as six weeks ago, as I was about to say, they voted basically to proceed with a Unit-1 license restart application irrespective of the outcome of these criminal proceedings.

Now I realize this is of secondary significance to whether the Court ought to take a plea, but Mr. Curran (TMI's lawyer) seems to raise the issue that we are not to worry if there are any loose ends here today because the NRC will take care of it. It is utterly delusional.

The NRC doesn't care what is in the indictment; they have said so. They don't care what the outcome of this case is; they have said so. They are going to proceed and do whatever they want to do, and that is fine because I have no control over the NRC, nor does the Attorney General or anyone else in the Department of Justice. But the statement of the facts as read by me a short time ago are precisely the correct statement of what took place.

The TMI case, among others, demonstrated the real need for an independent Office of Investigation at the NRC, and the lengths to which some NRC leaders will go to protect the industry."

From my perspective at the Department, OI functioned fairly effectively, since it has sent the Department several dozen criminal referrals. Prior to OI, the Department received very few referrals from the NRC (see DOJ letter, Stephen J. Trott, Assistant Attorney General to Honorable Nunzio Palladino, NRC Chairman, March 18, 1985). Despite OI's success, I detected continued pressure on OI to conform with the generally "hands-off" attitude if not policy of the NRC. These pressures have led to continuous attempts to control OI. One of the most serious threats is the possibility that OI would be moved under the control of the Executive Director for Operations, which is no less than putting the fox in the chicken coop. Such an attempt was beaten back in 1985, with the support of the Congress and the Department of Justice. I believe Mr. Trott's letter is very important because it states:

> "Prior to and since the creation of OI, there has been some opposition as well as resistance within the NRC to the detection and disclosure of deliberate wrongdoing by NRC licensees...Senior personnel within

the NRC who could affect or influence OI's ability to detect and report violations if it were realigned may have contributed to this problem."

The legislation proposed by Chairman Glenn would statutorily end the possibility of moving OI. I believe this is a vital step to insure that OI will remain independent, and that wrongdoing will be detected.

The final example I would like to share with the Committee does not concern a particular criminal case; it is the proposed Advisory Committee on the Rights of Licensees, which the NRC tried to establish in 1983. Those behind the establishment of an Advisory Committee sought to notify companies in advance that investigations were being undertaken, and allow utility lawyers to attend all meetings between NRC investigators and company personnel. These and other proposed restrictions would have gone well beyond what the Constitution and federal law require in the way of due process for targets or subjections of investigations, who would, no doubt profit handsomely by insinuating themselves into interviews of employees. This (effort, under the guise of an Advisory Committee), would have carried the special relationship between the NRC and its licensees to preposterous lengths. It was merely a front to protect the utility companies from disclosure of wrongdoing. DOJ and Congressional intervention thwarted this ruse, and similarly kept the OI from being placed under the NRC senior staff, and, helped persuade the Commission not to adopt a pro-licensee definition of material false statements, which was another remarkable episode.

One Commissioner summarized the position of those in the NRC who do not favor prosecutions when he told one U.S. Attorney that utilities should not be liable for false statements unless they are made under oath in the course of giving testimony. Of course, almost none of the NRC's contacts with utilities in the course of construction and operation of a nuclear plant are conducted under oath, so prosecution of false statement violations would disappear. A high official of the NRC stated it another way: "I don't want to know about false statements. Is the hardware okay" These attitudes are antithetical to restoring public confidence in the NRC's regulation of commercial nuclear power. While the Committee cannot legislate attitudes, it has proposed the needed changes in the way OI would continue to report internally, and how it will refer cases to the Department.

OIA's Inadequacies

The last issue I would like to discuss concerns the inadequacy of the NRC's Office of Inspector and Auditor, the putative inspector general's office. The leadership of this office has been a disaster. One Director of that office was effectively dismissed only after an embarrassing court decision cast doubt upon his integrity. The current head of the office has been the subject of a criminal referral to the Justice Department. The Department's correspondence in that case casts doubt upon her integrity and judgment. (See, Letter from J. Greenspun to S. Connelly, February 7, 1986; Letter from L. Lippe to H. Plaine, March 21, 1986; and Letter from L. Lippe to L. Zech, Jr., October 1, 1986.)

OIA has historically ignored wrongdoing by NRC staff which benefitted operators of nuclear plants. This indicates to me that they are not investigating matters of importance, or at a minimum, are not conducting these investigations in a sufficiently professional manner.

I am convinced that a statutory I.G. who has the independence to look will find real wrongdoing at NRC, as other I. Gs. have found at their agencies. I believe there is a need for a statutory inspector general at the NRC which would aggressively audit and investigate all of the NRC's programs and activities. Fundamentally, such legislation would ensure that all senior agency officials who engage in inappropriate conduct or mismanagement are within the jurisdiction of such an office. I also believe the legislation addresses the problem of OI's independence in a vital and necessary manner.

Thank you for providing me with this opportunity to testify. I believe the continued existence and absolutely necessary expansion of nuclear power is too important to the future of this country to allow its regulation in a haphazard fashion. As with the Banking and Securities Industries, however, effective, vigorous and independent enforcement of the law is necessary to minimize the possibility of a disaster as well promote public confidence in the system. We have no right to expect either with purported watchdogs who are supposed to work for the public, but in reality are "in bed" with those whom they are charged with regulating.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 21 1987

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Glenn:

During the course of your Committee's April 9 hearing you offered me the opportunity to provide a written response to a number of issues raised by witnesses who testified at that time. I will appreciate your consideration of my comments because the charges already on the record cannot be evaluated fairly in the absence of a response. I do not believe any organization is perfect. Mistakes are made and from time to time errors in judgment occur. But to cause such issues to reflect on the entire staff of the NRC is fundamentally wrong. I am convinced that the NRC staff includes the most knowledgeable and professional experts on nuclear safety to be found anywhere in the world. The staff is dedicated to essentially the single mandate of protecting the health and safety of the public. I am confident that my response, which includes issues raised regarding certain staff actions, will resolve these issues to your satisfaction.

My sworn and notarized response is enclosed and is respectfully submitted for the Committee's record. In this regard, I am disappointed that my ability to provide more complete information for the record has been inhibited by the decision to limit access by my staff to deposition transcripts which the Committee intends to make public anyway. The restricted transcripts are returned herewith.

Sincerely,

Victor Stello Jr.

Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Written Statement and
   Detailed Appendix
2. Depositions of Hayes and Mulley

cc: The Honorable William V. Roth, Jr.

I, Victor Stello, Jr., hereby swear that the statements in my "Written Statement Before the Senate Committee on Government Affairs" dated April 28, 1987 and the statements in the "Detailed Appendix to Written Statement" attached thereto are true and correct to the best of my knowledge and belief.

Victor Stello, Jr.
Executive Director
for Operations

Subscribed and Sworn before me
this 28th day of April, 1987,
at Bethesda, Maryland

Malinda L. McDonald
Notary Public
My commission Expires 7/1/90

WRITTEN STATEMENT OF VICTOR STELLO, JR.,
EXECUTIVE DIRECTOR FOR OPERATIONS
US NUCLEAR REGULATORY COMMISSION

BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
APRIL 28, 1987

On April 9, 1987, the U.S. Senate Committee on Governmental Affairs conducted a hearing on "The Need for an Inspector General at the NRC." During that hearing three NRC employees and a former Department of Justice attorney made a number of allegations concerning me personally and the activities of the NRC staff reporting to me. Senator Glenn invited me to respond in detail to the Committee after I had had an opportunity to review the record.

I believe a perspective concerning the relationships and responsibilities of three Commission offices -- the Executive Director for Operations (EDO), the Office of Inspector and Auditor (OIA), and the Office of Investigations (OI) -- is required. I have three observations derived from the testimony before the Committee which I will discuss in some detail.

First, it is clear that OI, OIA, and the EDO and their respective staffs have not been working well together. Those relationships must improve.

Second, there is a reluctance among some agency employees to report allegations of internal misconduct to OIA or to use the agency differing professional opinion process.

Third, it is perceived by many of the NRC staff that OI places excessive emphasis on criminal matters as a first priority rather than obtaining information to permit the agency to carry out its safety mandate, while at the same time OI perceives that the staff does not sufficiently support investigations of wrongdoing.

The President's Commission on the Three Mile Island Accident (Kemeny Commission) stated, "The huge bureaucracy under the commissioners is highly compartmentalized with insufficient communication among the major offices." (overview p. 21) The Commission's Special Inquiry Group (Rogovin) in its Conclusions and Recommendations on Safety Management Factors (p. 1239) recommended that the NRC "Examine and modify the NRC organization as required to ... assure that safety is implicit in the functions of all offices." (p. 1241) As Chairman Zech pointed out at the hearing (Tr. 73), the NRC has many independent offices, committees, and investigatory units and it is difficult to get all these independent bodies to focus on the agency's primary safety mission. In spite of every major management study of the NRC recommending a single administrator, it is clear that Congress has not been willing to establish a form of organization that would enhance NRC's ability to effectively focus and carry out the agency's safety mandate. Recent efforts to improve the organization of the staff offices reporting to the EDO reflect the Commission's resolve to strengthen NRC's attention to its safety mission. The investigatory mission which ensures the integrity of staff and licensee performance also is important and necessary. The organizational structure of the investigatory functions, however, makes it difficult to prioritize and focus on matters which are of greatest importance to achieving the safety mission.

I need to digress for a moment to explain more fully the basis for my statement regarding the impact of your proposed legislation Tr. (168-9). The observations already noted and issues I will present later suggest to me that the language of the proposed legislation would put further emphasis on the isolation, independence and criminal aspects of OI investigations. Such emphasis would serve to make resolution of the management problems we now face even more difficult. More to the point, it would result in less safety. I am firmly convinced this need not happen. Better working relationships have recently been achieved between NRC and DOJ. Increased management attention to the underlying issues will foster increased understanding by OI and EDO staffs of each others' responsibilities and sharpen everyone's focus on the agency's fundamental mandate to protect the health and safety of the public. This is a significant management challenge. Decreasing the Commission's management latitude, which I believe the proposed legislation with respect to OI will do, will only compound the problem. One final point in this regard: day to day safety oversight of facilities is an operational responsibility delegated to the EDO and staff offices. It is vital that safety issues investigated by OI be efficiently and effectively integrated into the day to day operations.

The reluctance of some employees to go to OIA for fear of retaliation and damage to their professional careers is not a new problem in this or other agencies. The Commission has put in place "open door" procedures, a differing professional opinion process, and has repeatedly informed employees of their right to go to OIA in confidence. The Rogovin report suggested an agency "ombudsman" for employees who wish to have their safety concerns pursued without risk to their professional career. If an independent IG could overcome the perception that "whistle blowing" is dangerous to one's career no matter how significant the safety concern the employee may have, I would endorse it without hesitation. Whatever mechanism is decided upon, however, should not excuse anyone (the IG, the employee, or line management) from ensuring that the agency's senior responsible safety officials are fully informed at the earliest opportunity of the management issues which could affect the safety mission of the agency.

The principal allegations concerning the EDO and his staff made by witnesses before this committee involved the agency's investigative function of licensee activities rather than its inspector general function. Even the allegations related to NRC employee misconduct were related to "interference" with the investigative function. Since the inception of the Atomic Energy Commission, through the creation of the NRC and continuing until the present, an important tool used to fulfill the Commission's paramount responsibility to protect the public health and safety has been the inspection of licensees and their activities. While inspections identify violations of regulatory requirements, thus enabling prompt and effective enforcement action, the single most important purpose of inspections, whether or not a violation of requirements is identified, has been, is, and always will be the identification of safety issues so that appropriate actions can be taken to resolve them. The individuals who are best qualified to perform this important function have education, training, experience, and knowledge which is primarily technical in nature.

Historically, these technical inspectors occasionally encountered circumstances which involve wrongdoing and which could have affected safety. The technical inspectors, however, lacked investigatory training and competence to pursue deliberate licensee wrongdoing. Therefore, trained investigators were hired to assist the inspectors in performing the primary functions of identifying and resolving safety issues. As the number of licensees increased there was more frequent need for such assistance. This led to hiring more investigators and eventually to the creation of OI as a separate organization. More importantly, it was recognized that the quality and thoroughness of investigations needed substantial improvement. OI is comprised of individuals whose background, training, experience and interest is in perfecting criminal investigations. As professionals in that line of work, OI personnel are naturally oriented to obtaining information necessary to prosecute and convict individuals rather than being oriented to providing assistance in obtaining safety information for making regulatory decisions. I fully recognize the importance and deterrent effect that criminal investigations, referrals, prosecutions and convictions can have. I fully support that deterrence. I have consistently urged early referral of such matters to DOJ. However, in my view the primary mission of OI and its focus must be first on obtaining information to make regulatory decisions. That information can then be used to support the criminal process under the supervision and direction of DOJ.

Problems which developed between OI, and the EDO staff offices stem from a failure to accept the identification and correction of safety problems as the primary focus of this agency. That focus demands that OI and the EDO offices work closely together and share whatever information there is which could affect safety decisions. Should OI fail to provide the staff with information needed to make safety judgments and decisions, the staff cannot effectively discharge its responsibilities. It should be noted in this regard that the director of OI is not authorized to take necessary actions to correct safety problems; rather, his responsibility is to relay any safety-related information to the staff promptly.

Many of the concerns raised by Mr. Hayes involve matters which predate actions taken by the Commission to reorganize and refocus agency offices on the safety mission. Earlier problems should not be mixed with whatever problems may exist today. If a safety issue is identified during an investigation, OI field investigators tend to provide the staff with such information promptly. For example, OI efforts have been helpful in achieving the safety mission of the agency in cases such as Radiation Technology, Wright Patterson Air Force Base, Bloomington Hospital, Mercy Hospital, Peach Bottom, American Testing, and Advanced Medical. The information from OI permitted the agency to act promptly, frequently without waiting for the completion of the investigation report. There are also examples of cases where the technical staff provided technical assistance to DOJ during its investigations and grand jury inquiries relating to cases referred to DOJ by OI such as: TMI, Zimmer, D.C. Cook, Advanced Medical and International Neutronics. Close working relationships in these cases proved effective in discharging the agency's safety mission and helped to foster a better understanding and appreciation of the functions of OI and staff. In contrast, when the results of an investigation were needed to decide what regulatory action was necessary, delays in the release of investigatory reports created tension and frustration for both OI and technical staff officers. In my view, the fundamental reason for this latter problem was the undue emphasis on independence of the investigative function. Examples of cases in which this occurred are Fermi, Sequoyah Fuels and the TMI Polar Crane issue. The OIA Comanche Peak investigation, as explained, was of special concern to me from a management perspective.

In my view, the agency's investigatory arm should not have its primary role defined as building a criminal case rather than developing safety information for those in the agency who need it to effectively discharge their duties. The Chairman has made it clear to the directors of OI, OIA and the EDO that each has responsibilities and sufficient latitude to do their respective jobs. Because the EDO offices have the responsibility to act on safety matters, my desire and that of my staff to be promptly informed may be viewed by OI and OIA as "pressure to complete an investigation". Such perceptions are unfortunate but may be inherent in the conflict between the desire to make prompt safety decisions and the need to conduct a thorough and complete investigation. I address this issue further in the Appendix. When management or safety information is involved, OI and OIA are clearly required to pursue such information on a priority basis in order to ensure that I receive it as soon as possible in order to act in an informed and timely manner.

Concentrating on any area of difficulty can have a tendency to exaggerate its significance. Such is the case, I believe, with the testimony before this Committee on the OI function - including my own comments. The fact is that we are well aware of the problem. The Commission and all of its senior management are committed to its resolution. Indeed, while we have made mistakes in the past, recent indications from the DOJ suggest that matters are getting better. When investigations are accomplished jointly with the technical staff, the results are readily accepted, regulatory action is accomplished promptly and feelings of contributing to the agency mission and job satisfaction are readily apparent.

DETAILED APPENDIX TO WRITTEN STATEMENT OF VICTOR STELLO, JR.
EXECUTIVE DIRECTOR FOR OPERATIONS

Testimony of witnesses presented by the Committee and its staff on April 9, 1987, asserted or suggested the following improper actions on my part or on the part of NRC staff reporting to me and for whom I am fully accountable and responsible. In general those witnesses have asserted that:

- I [we] are opposed to, or at least soft on, criminal prosecutions in the nuclear industry;
- I [we] engaged in actions designed to frustrate successful criminal prosecutions;
- I [we] are "too cozy" with the licensees we regulate as demonstrated by:
    - my telephone call with Mr. White of TVA
    - attempts to control OI's investigations
    - tipping licensees to OI investigations;
- I put pressure on OIA to complete an investigation.

I believe these charges, generally, reflect a misunderstanding of the agency's principal obligation to protect and promote public health and safety. For that reason and also because the charges impugn my personal reputation and performance, I have prepared this response for the record.

I am neither opposed to nor soft on criminal prosecutions. While the NRC has an obligation not to obstruct a DOJ criminal investigation, that obligation does not include a presumed duty on the part of NRC to conduct criminal investigations either on its own or at the demand of DOJ for purposes unrelated to its safety mission. Therein is the problem, particularly because of the large backlog of pending OI investigations, the results of which are needed to resolve safety issues in a number of cases. Both Mr. Hayes and Mr. Greenspun have criminal investigator/prosecutor backgrounds. It is, perhaps, understandable that, given a lack of technical backgrounds, Mr. Hayes and Mr. Greenspun see things as they do.

The NRC is not primarily a criminal investigatory or prosecuting agency any more than are the agencies which regulate flight safety or food safety or mine safety. But, as is the case with those other agencies, occasionally in the course of carrying out our regulatory responsibilities, we run across conduct which could amount to criminal wrongdoing. When this occurs the matter should be referred to DOJ for appropriate disposition. It is not the function of this agency to attempt to "make" a criminal case for purposes of conviction. Nor is it our primary function to act as an agent of the DOJ and pursue a criminal investigation for that Department. We do, however, cooperate with DOJ and in appropriate cases provide resources to DOJ. Examples of such cooperation were cited earlier. It must be recognized that when we do this, it reduces the limited resources available to us for carrying out our mission of protecting public health and safety. Thus, we have fewer investigators and inspectors to pursue issues directly related to our health and safety mission. For this reason, we must exercise care in employing such resources only where the public health and safety benefits from successful prosecution warrant the resource expenditure.

Concerning the question of whether I took actions designed to frustrate successful criminal prosecutions, Mr. Greenspun addressed issues related to Three Mile Island and accused me of acting improperly regarding those issues. In doing so, he resurrected old issues which have been thoroughly investigated and resolved by both the FBI and a Federal Grand Jury. I could respond specifically to each of his charges, but I do not believe it is necessary. My reading of the FBI report and my understanding of the Grand Jury's actions lead me to conclude that all of the issues investigated by the FBI and grand jury were resolved by finding no wrongdoing on my part by design or otherwise. I continue to be troubled by the fact that Mr. Greenspun, using his prosecutorial authority, could head an investigation into issues in which he was personally involved. I think his personal involvement is clear from his own testimony before this Committee. Certainly, his own conduct could have been an issue in such an investigation. I leave to others to judge the propriety and ethics of such behavior. I urge you, Mr. Chairman, to obtain a copy of the FBI Report No. 46A-11367, dated July 1, 1986 and examine it. I trust it will demonstrate to your satisfaction that these old charges were resolved contrary to Mr. Greenspun's personal biases.

Mr. Greenspun also stated that he personally requested that I not meet with a licensee under investigation, and that I subsequently engaged in a lengthy discussion with that licensee. He further stated that the meeting "unnecessarily derailed criminal prosecution," that I knew this would be the result, and that I and my deputy "confessed away the case." Having reviewed the documentation of events of over seven years ago, and after discussions with the other participants, I can state that Mr. Greenspun's interpretation is not correct. The particular case referred to involved an NRC licensee named Nuclear Pharmacy, Inc. (NPI).

When I received the proposed enforcement package from NRC Region III in the summer of 1979, it appeared to me that NPI had committed a very serious violation. The Region had cited NPI for shipping containers of Xenon gas, which were not designated as fit for human use, to various hospitals to be used on humans. Review of records indicate that I decided to substantially increase the civil penalty proposed by the Region. Also, I believe my staff and I considered revocation of the license. In June of 1979 as the then Director of the then Office of Inspection and Enforcement (OIE), I referred the case to the NRC Office of Inspector and Auditor (OIA) for possible referral to DOJ, but retained the right to continue investigating health and safety implications. The notice of proposed civil penalties was sent to the licensee in August. The licensee responded vigorously, insisting that there were no health and safety problems and that, given the wording of its license, its actions might not constitute a violation.

During the fall of 1979, numerous meetings were held with FDA and others. As these meetings progressed it began to look as though NPI's actions were less serious than originally believed. Nevertheless, in October of 1979 OIA had referred the NPI case to DOJ. At that point NRC lawyers were in touch with DOJ. At no time did the lawyers from DOJ indicate that the NRC should refrain from contacting the licensee. Within this time frame, we considered using a form of consent decree in which the licensee would admit culpability. By the end of 1979 it became evident that NPI would not agree to the type of language in the consent decree that I deemed necessary. As a result, NPI was informed that no settlement would be forthcoming.

NPI thereupon requested one final meeting to present their side of the case. This meeting took place on January 21, 1980, and is the one referred to by Mr. Greenspun. Its only purpose was to hear whether NPI had any new information; not to make any concessions on the part of the NRC. Where the public health and safety is concerned, I believe it is my duty to elicit as much information as possible. During the meeting, NPI reiterated its previous arguments. No statements were made by either me or my staff that could be construed as weakening the case against NPI. Subsequent to that meeting I was informed that Mr. Greenspun had taken the position that there should be no contact between the NRC and NPI, and that the meeting had compromised the DOJ case. I do not agree with Mr. Greenspun's interpretation. In a letter dated November 20, 1981, from Mr. Greenspun to the attorney for NPI, he stated that DOJ had decided to defer prosecution, and that the decision "is substantially based on NPI's representation that it has rectified the activities in question and will continue to comply with NRC rules and regulations". In February of 1982, the NRC Staff imposed its civil penalty on NPI.

Another case cited by Mr. Greenspun (Tr. 129) concerns the now abandoned Zimmer facility. He states: "For years NRC inspectors were finding serious problems at the Zimmer plant in their inspections, and were told by the regional office in Chicago not to write it up and in reports but to keep a little notebook of violations he was finding. So, if the inspector got hit by a truck, nobody would know about the violations." This is a new allegation. Current Region III personnel who were closely associated with the NRC inspection of Zimmer during the late 70s and early 80s know of no such allegation or occurrence. Had such an allegation been made to Region III, it would have been referred to OIA. Had such a practice been identified, it would have been corrected.

Mr. Greenspun also alleges that "This plant was about to open, the Zimmer plant, shortly, but for a whistleblower by the name of Applegate, who twice had to go to the NRC after they did a couple whitewash investigations." At the time of the Applegate allegations, construction of the Zimmer plant was not complete and preoperational testing of the plant was in the earliest stages. Hence, the plant was not ready to start operations. The Region III investigators initially reviewed all of Mr. Applegate's allegations and concluded that three warranted NRC investigations. The other allegations concerned matters which were thought to be more properly addressed by other regulatory bodies. The results are documented in Investigation Report No. 50-358/80-09. In the second investigation, the NRC inspectors and investigators looked at all 19 Applegate allegations, four allegations made by quality control inspectors, three allegations received through site interviews, in addition to other areas of NRC concern. The results of the second investigation are documented in Investigation Report No. 50-358/81-13 and resulted in a $200,000 civil penalty against Cincinnati Gas and Electric Company, the licensee, and led to the NRC requiring major corrective action programs and a verification of the quality of completed construction. In retrospect, receipt of the allegations which prompted the second investigation perhaps should have led to the staff's identification of the significant breakdown of QA activities.

Finally, Mr. Greenspun concludes: "So you had a plant that would have opened that was eventually found, the Zimmer plant, to be so unsafe -- once they were publicly exposed, were found so unsafe that they could not allow it to open. But for a whistleblower, that wouldn't have happened and it could have opened." Although Investigation Report 50-358/81-13 documents many problems, the report did not reach the conclusion that the plant was unsafe. These findings, subsequent NRC findings, and licensee inspection findings raised sufficient quality questions that the NRC required the licensee to submit a plan to verify the quality of construction of the plant. Before this plan could be completely carried out, the licensee terminated construction of the nuclear facility with the intention of converting it to a coal fired plant.

In addressing the charges concerning whether my staff or I are "too cozy" with the licensees we regulate, it is necessary to understand that by necessity the technical safety staff and I have daily contact with licensee representatives. We also have daily contact with other members of the public with interest in the matters we regulate. The purpose of these contacts is for the exchange of information. When licensees have questions concerning NRC policy or rules, they do not have to speculate but are perfectly free to pick up the phone, call an appropriate NRC official and request information. To suggest that such contacts are inappropriate reflects a misunderstanding of a public official's duty to be responsive. In fairness one could criticize the staff for being too concerned over the regulatory action needed to correct problems. This in fact was one of the concerns expressed by the OI staff during the meeting I mentioned at the hearing. (Tr. 169-70). In this regard it is of interest that Chapter IV on Safety Management of the Rogovin Report (p. 1241), recommends that NRC announce as a matter of policy "that prosecutorial discretion will be exercised to effect a meaningful balance between enforcement of rules to ensure their accomplishment and yet encourage close cooperation with industry in communications to prevent accidents."

During early 1986 we were also being criticized for not being aggressive enough in identifying issues that needed to be resolved specifically on our review of the TVA issues. This is an especially difficult issue. If the staff recognizes actions that can be taken to resolve a regulatory concern, should such actions be identified? This is compounded further when the basis for action is derived from an ongoing investigation. Frequently this also involves one or more specific individuals, the disclosure of whose identity could have the potential for interfering with an investigation or prosecution and therefore precludes the staff from identifying these individuals to the licensee. We are then faced with a difficult choice -- keep a facility shut down for months or as long as it takes to complete the investigation and DOJ review when applicable, or risk compromising the investigation by removing and thus disclosing the problem individuals. If DOJ were to prosecute the case the shutdown may extend for years. It is my belief that the public interest is best served when we aggressively resolve regulatory issues. I also believe this is what Congress intended but I recognize it contributes to the unfounded accusation of being "too cozy" with licensees.

We are currently working with DOJ on a memorandum of understanding to structure such discussions to further the statutory missions of both agencies. The proposed legislation involving an independent OI will serve to further distance its investigation efforts from the technical staff responsible for safety. It is in fact important that OI and the staff work together to first identify and correct the safety problems and, by so doing, to assure that facilities can be restored to operation and public service. For example, we frequently attempt to correct safety problems at hospitals or firms serving hospitals through use of our enforcement sanctions, in order that the practice of nuclear medicine can be resumed in the public interest. Examples are Mercy Hospital, Valley Radiological Clinic, Advanced Medical Systems, Bloomington Hospital, and Lakeview Hospital.

During the hearing there were two basic issues related to a phone call between myself and Mr. Steve White of TVA. (As in this case, I routinely return phone calls in the presence of senior staff.) The first issue deals with the adequacy of the OIA investigative process itself in which I had no involvement other than being interviewed and therefore have no comment. The second issue relates to Mr. Hayes' characterization of the phone call as improper. In contrast, the OIA conclusion regarding this matter as stated in the report dated August 28, 1986, is: "There was no information developed during this investigation to substantiate any impropriety on the part of STELLO during his telephone conversation with WHITE..."

Mr. Hayes' concern over this matter was, as noted in the OIA report, "in light of the fact that we already had an ongoing material false statement investigation." The existing investigation he mentioned in testimony relates to the prior senior TVA nuclear manager attesting to Watts Bar Unit 1 readiness for fuel load in April 1985. That investigation deals with the state of that manager's knowledge of the plant at that time. Subsequent to that, many employee allegations and TVA inspections have indicated that potential quality problems exist at Watts Bar. In fact, the NRC staff's letter to TVA in January 1986 questioning compliance with Appendix B at Watts Bar was based on the work of TVA's own Nuclear Safety Review Staff. Thus, these matters arose subsequent to the April 1985 letter and were not a part of the ongoing OI investigation referred to by Mr. Hayes. Clearly, the telephone call from Mr. White was not related to the investigation of the prior senior TVA nuclear manager. To suggest otherwise would imply the entire NRC review of TVA problems is likewise related to the ongoing investigation of the TVA's April 1985 letter on Watts Bar.

Specifically, now referring to my sworn deposition taken relative to this matter dated July 30, 1986, I identify at least two telephone conversations related to Appendix B issues. In one conversation I indicated to Mr. White that he ought to finish his job and then respond to the letter. Mr. White indicated that he made the commitment to respond by a specific date and would do so. As the facts related to this matter show, Mr. White did in fact respond on March 20, 1986. Mr. White had taken over the leadership of TVA in January 1986 and was therefore on the job only a relatively short time. My concern was that he should have taken the time to understand the overall status of Q/A problems at TVA before responding. Apparently, he felt constrained by the commitment to respond in a certain timeframe. In fact, conversing on technical issues is part of my job and indeed that of the NRC staff -- as long as the matter itself is not under investigation. As previously stated, this matter was not under investigation. For cases under investigation, we have procedures which cover how such discussions are to be conducted to assure safety issues are resolved while not prejudicing ongoing investigatory activity.

A second conversation with Mr. White concerned the need to assure that he needed to continue to pursue Appendix B issues and to inform the NRC of any significant problems identified related to the Appendix B issue. Indeed our regulations require such activities as discussed during the conversation. By the way of background, I knew Mr. White's previous experience was with the nuclear navy program, which is not governed by the code of Federal regulations used for commercial nuclear facilities.

In summary, both my conversations with Mr. White of TVA, only one of which has been the subject of criticism by Mr. Hayes and about which two of my senior staff members felt "uncomfortable":

- were initiated by Mr. White;
- transmitted no substantive information to Mr. White;
- centered upon emphasizing the needs of the NRC for full and complete information; and
- were in the interest of the regulatory functions of this agency.

In those circumstances I did not then and do not now see anything approaching impropriety in the conversation. Indeed, the sort of contacts with licensees and others which are not appropriate have been set forth in a set of guidelines I have proposed to be added to those which already have been adopted by the Commission. Those guidelines do cover such matters as staff review of draft responses to enforcement related documents but they cannot be reasonably construed to cover telephonic admonitions to provide the NRC with the fullest and most complete information available -- the sum and substance of my conversations with Mr. White.

As discussed in part earlier, Mr. Hayes must view my demand to be informed about safety information in his possession and to have investigations with significant safety implications pursued on a priority basis as "attempts to control OI's investigations". The Investigation Referral Board (IRB) was established not to control OI but as a management tool to assure that matters referred to OI for investigation met the dual threshold test established by the Commission of (1) a reasonable basis to believe that wrongdoing occurred, i.e., the violation at issue appears more likely to have been intentional or to have resulted from careless disregard or reckless indifference than from error or oversight, and (2) there is a regulatory need for an investigation. The first threshold is important to differentiate what cases should be handled by the staff inspection process in contrast to the investigation process. The second threshold is important because in some cases there may be sufficient evidence available to make a regulatory decision without the need for an investigation.

In making its recommendations the IRB considers the various perspectives and views of senior managers in the offices of NRR, NMSS, EDO, IE, and OGC. OI was invited to participate in the IRB deliberations because they would offer insight on wrongdoing issues and perspectives on what matters need to be investigated. However, while they were given notice of meetings, OI chose not to participate in IRB activities. Nevertheless, OI is given a copy of each case that the IRB considers as well as a copy of the decision of the IRB. This preserves OI's option to self-initiate an investigation if it believes one is appropriate.

It should be noted that the IRB serves in a advisory role. In an emergency, regional administrator can initiate an investigation without first consulting the IRB. In addition, if not satisfied with the views of the IRB, a regional administrator may refer a case to OI anyway, after discussions with the Executive Director for Operations.

Another important function of the IRB was to establish a national priority of cases for OI investigation based on regulatory significance and need. The Commission has established guidance for establishing priorities for investigations. However, with five regional offices, many different types of licensees with differing potential hazards, and guidance which by necessity is broad, it is difficult to establish uniform priorities. Recognizing that, regions may have issues of varying importance (for example, a high priority in region X may be a normal priority in region Y), it was important to establish a national priority listing to assure that the agency's investigatory resources were being focused on the most important safety issues. The IRB with the assistance of senior managers from the regions established a national listing which is expected to be updated periodically.

In response to the concern about the change in the referral rate since the IRB, a tabulation of regional requests for investigations by month was developed. A formal OI referral process was instituted by the EDO in the summer of 1985 requiring written requests. Consequently, there is a paucity of records prior to this time period. Based on our statistics the regions showed the following number of cases referred to OI for the 14½ month period prior to the IRB:

I	II	III	IV	V	
14	31	10	15	17	TOTAL (87)

Prior to the IRB, during the 9/85 to 11/10/86 timeframe nationwide there were 87 regional referrals; this number is equivalent to 72 referrals on an annualized basis. A breakdown of the historical numbers shows that the TVA cases have had an impact in that Region II has essentially twice as many referrals as any other region. Of the 31 cases in Region II, 22 dealt with TVA. Putting the TVA cases aside, it leaves an annual rate of 54 cases. Similarly, it is of interest to note that in the 5½ month period before the formation of the IRB, both Regions I and III had only two referrals each. After formation of the IRB, Region I had two cases referred to OI and Region III had five cases referred to OI.

For the five month period of the IRB examined herein (11/10/86 to 4/9/87, the regions have submitted a total of 25 requests, two of which were sent directly to OI in accordance with emergency referral provisions. The cases identified by the regions during the five month interval are :

I	II	III	IV	V	
2	5	5	10	3	TOTAL (25)

However, there is a unique situation in Region IV that warrants special consideration. In response to OI, the region classified one request as eight individual referrals since eight different dockets were involved. One could view, as the Region IV originally did, that this should be counted as one request. This affects the statistical comparison since the volume during the 5-month period could be viewed as 17 requests. The 25 cases identified by the regions are equivalent to 60 on an annual basis; adjusting for the above noted anomaly equates to about 40 cases annually, as compared to the previous year's annual rate of 54 cases when TVA is excluded.

However, the rate at which regions identify possible cases is not indicative of what is formally transferred to OI. Although OI has been provided copies of all submittals to the IRB, not all cases receive IRB approval; notwithstanding, experience has shown that the regions have accepted the IRB recommendations in all cases. Consequently, 13 cases have been referred to

OI; two of which have been emergency referrals. This volume is equivalent to about 30 referrals on an annualized basis. This reflects a decrease of about one-half from what has been experienced historically. However, the cases reviewed by the IRB have undergone a more thorough screening for completeness and prioritization such that they should not be rejected or denied by OI, as has been done on occasion before the inception of the IRB. As an example, four of the six requests made by Region II in May 1986 were denied by OI. From 9/85 to the establishment of the IRB 55 of the 87 cases referred to OI were treated as inquiries to determine whether a formal investigation should be made. Thus, less than a third (22) were treated as formal investigations.

Based on five months of IRB data it is difficult to draw statistical conclusions that there is a dramatic decline in regional referrals. For example, Region I had referred only two requests to OI in the five months interval prior to the inception of the IRB. In the five month period since the IRB was established, Region I has had two requests forwarded to OI through the IRB. However, the IRB in reviewing cases against the Commission's thresholds have reduced the number of cases referred to OI by about 50%. Cases were rejected for referral because there was not a belief that wrongdoing occurred, investigations were not necessary to permit appropriate regulatory action, or because OI was actively pursuing the matter such that a referral was not necessary.

In sum the IRB has not had a chilling effect on the number of cases identified by the regions. Cases are not hidden. Rather, the cases are being considered in a professional manner. OI is made aware of each action and invited to participate. The IRB is still in its six month trial period and appears to be serving the management function it was intended to serve. However, the staff is in the process of determining whether the IRB should continue past the trial period.

Mr. Hayes' adoption of Commissioner Asselstine's comment that the IRB appears to be a "...thinly veiled attempt by the EDO to control OI by controlling what referrals are made and thus what OI investigates" is yet another example where there is failure (1) to understand the real purpose of OI investigations and (2) to appreciate the management problems within the agency. Mr. Hayes reluctance to participate in the IRB process is another lost opportunity that could have fostered better communications with the staff, thereby improving relationships. Perhaps more importantly, the real purpose of the IRB -- to function as a management tool to assist both OI and the staff -- could have been more effective. It is indeed disturbing that Mr. Hayes does not see the need for investigations as derived from staff needs. In fact it is the staff who identifies the need for investigations. If there is not a regulatory need (safety), should an investigation be conducted? This should be a rhetorical question; unfortunately it is not. Answering this question and assigning priorities is a legitimate management activity, the fundamental reason for the IRB. I indicated during the hearing (Tr. 169, 184-5) my surprise that any manager could harbor the ill feelings Mr. Hayes did for apparently as long as he has. A manager should recognize the conflict and arrange a meeting to discuss and resolve the issue. If it could not be resolved it should have been escalated. I also noted during the hearing two meetings I arranged with Mr. Hayes' senior staff to discuss issues. I invite Mr. Hayes to our periodic meetings to interact with my senior staff. It is difficult to resolve differences and manage conflict without cooperation. In all candor, I cannot recall a single instance during my tenure as EDO (15 months) when Mr. Hayes has made an effort to resolve these conflicts. I find this to be a disappointing management attitude, which must be overcome to resolve the conflicts. The purpose in providing the foregoing information is to clarify the difficult nature of the management problem. However, it does not change my resolve to continue in whatever way I can to improve working relationships to an acceptable level. I intend to continue my monthly meetings with Mr. Hayes and expect Mr. Hayes will participate in our next senior staff meeting in June. Furthermore, I will look for additional opportunities to foster enhanced communication and an improved working relationship.

Mr. Hayes cites the Milford Hospital case as an example of where a licensee was "tipped off" about an investigation because the technical staff tried to investigate rather than requesting that professional investigators, such as OI, conduct the investigation. The investigation for the Milford Hospital case is still pending, so I cannot discuss the details. In response to the "tipping off" claim, however, it is sufficient to note that during the course of a routine technical inspection at Milford Hospital, an NRC inspector, in the presence of the licensee's radiation safety officer, identified obvious, uncontested wrongdoing which was admitted by the licensee and the involved individuals and which, therefore, could not, by definition involve "tipping". OI was not requested to conduct an investigation because the charge was already substantiated by the licensee's admission to NRC technical personnel.

Concerning Mr. Mulley's testimony on pressure on OIA concerning the ongoing safety issues surrounding Comanche Peak, on November 26, 1986, OIA issued its Report of Investigation 86-10 addressing allegations of Region IV management wrongdoing relative to inspection activities at Comanche Peak. I will summarize my activities with regard to issues related to that OIA Report.

About March 19, 1986 I was informed that OIA had commenced an investigation addressing allegations of Region IV management wrongdoing relative to Comanche Peak inspection activities. Based on that, the Director OIA and I reached agreement that Region IV would cease further staff action to resolve the inspection issues in contention. In addition, I made arrangements that subsequent inspection findings of Mr. Phillips, the involved Resident Inspector, would be reviewed by Headquarters staff and management rather than the involved Region IV managers.

For about 4 or 5 months OIA continued their investigative work. I became increasingly aware of the negative impact it was having on the morale and effectiveness of both staff and management in Region IV. I became increasingly concerned that the investigation was detracting Region IV personnel from performing their basic job of protecting public health and safety. Some of the managers for Comanche Peak activities also have responsibilities covering the seven operating nuclear stations in their Region.

In the early summer of 1986, I met with Mrs. Connelly and Mr. Mulley. I expressed my concerns to get the investigation completed. I offered staff assistance to OIA and asked if there were anything else I could do to help them conclude their work. At that time, I was informed the report might be finished in August. In fact, the report was not finished until November.

Mr. Mulley chose in his testimony to characterize my actions as pressure. Frankly, I think I was only doing my job as the responsible staff manager considering the negative morale impacts the OIA work was having in the Region. Further, in a personal sense, I kept a humane balance. Upon hearing in late July from Mr. Mulley that a member of his family was undergoing surgery, I strongly suggested that Mr. Mulley consider his priorities and take whatever time he needed.

It was also suggested by two witnesses that the OIA Report of Investigation 86-10 was indiscriminately distributed throughout the agency. In reference to a December 4, 1986 Commission directive to take action as a result of the Report, the Report was initially distributed to only a limited number of senior staff management officials and selected staff members who were charged with the task of reviewing the Report and its very voluminous attachments in a short timeframe for the purpose of assessing:

(1) whether the Report identified any issues that were of such a nature in terms of safety that immediate action was called for;

(2) whether the Report identified any grounds for immediately initiating any personnel actions;

(3) whether the Report could be released to the public in its entirety or whether deletions were necessary in order to prevent unwarranted

invasions of personal privacy, to preserve the NRC's ability to effectively inspect or investigate any matters identified or refer matters to the Department of Justice for action, or otherwise to preserve the ability of the NRC to act on the Report's findings (i.e., were predecisional); and,

(4) what bearing the Report might have in the ongoing licensing proceeding related to the application for operating licenses for Comanche Peak.

Very shortly after the initial limited distribution, I requested and obtained the Commission's approval to provide copies of the Report and its attachments to six named Region IV staff members who were central to the OIA investigation. I did this for two reasons: first, out of concerns of fairness, to permit these persons to have accurate information concerning the Report prior to its release so that they could knowledgeably deal with the anticipated public inquiries that would most likely follow any public release of the document; and, second, so that management could discuss the Report with them in addressing the issues stated above.

On December 11, 1986, the Commission approved the public release of a redacted version of the Report, with the names of all individuals and certain other information potentially relevant to the conduct of an investigation deleted.

I considered the allegations to be very serious and, with the approval of the Commission, I established the Comanche Peak Report Review Group (CPRRG) and charged it with conducting a comprehensive review of the issues raised in the Report and making recommendations to address the issues. I gave the Chairman of the CPRRG special authority to draw upon whatever staff or consulting resources were necessary or appropriate to comprehensively address the issues. Extensive efforts by senior management and other staff personnel resulted in the CPRRG Report dated March 12, 1987. On April 14, 1987, I transmitted to the Commission my recommendations and proposed actions, and on April 16th, I briefed the Commission and requested its approval to implement the recommended actions. I also urged prompt release to the public of the OIA Report, the CPRRG Report and my April 14th recommendations. Because this matter is still pending with the Commission, I cannot discuss the details further. I can assure you, however, that the issues raised by the OIA Report have received the closest scrutiny and will be the subject of appropriate action as approved by the Commission.

STATEMENT

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

CONCERNING

THE UNITED STATES NUCLEAR REGULATORY
COMMISSION'S PROCEDURES FOR INVESTIGATING AND
REFERRING CASES OF POTENTIAL CRIMINAL WRONGDOING
TO THE DEPARTMENT OF JUSTICE

ON

APRIL 9, 1987

Mr. Chairman and members of the Committee, my name is Victoria Toensing. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. I am pleased to be here today to discuss with you the United States Nuclear Regulatory Commission's procedures for investigating and referring cases of potential criminal wrongdoing to the Department of Justice.

At the outset let me assure you that we consider our criminal law enforcement responsibilities in the nuclear industry to be a matter of great importance. Indeed, in our view the significance of effective regulatory and law enforcement programs in that industry cannot be overstated.

The Nuclear Regulatory Commission is charged by law with, among other things, protecting the public health and safety. Through deterrence, the criminal law enforcement process can significantly assist in protecting the public. Thus, we believe that the Nuclear Regulatory Commission and the Department of Justice must play complementary roles in this vitally important area.

The NRC is the governmental agency with primary responsibility in this field. Is is charged by law with the responsibility for setting the technical standards for the nuclear power industry. The NRC must then use its technical expertise to police this industry through its civil enforcement program and ensure that nuclear facilities are safely built and operated, and that nuclear materials are safely stored and used.

While the vigilance of the NRC must remain the principal means by which the public health and safety are protected, there is an important contribution which the Department of Justice can make to this field. Like all human activities, the nuclear industry may include those who would ignore the rule of law and engage in criminal misconduct. When such misconduct occurs it is the duty of the Department of Justice to prosecute those responsible, not only to punish them but also to deter others. We are fully committed to this goal. In our view the stakes for the public and the nation are simply too great to allow criminal wrongdoing in this industry to go unpunished.

While the Department of Justice has at times in the past experienced difficulties in coordinating its criminal enforcement efforts with the NRC, we have recently noted improvement. It is our hope that our relationship with the NRC will continue to improve and that our two agencies will be able to fulfill their complementary missions in a highly effective coordinated manner.

As we noted in our written response to the questions posed by this Committee, the NRC responded to our concerns regarding the investigative independence of the NRC's Office of Investigations. The Commission also considered, and largely adopted, our views concerning the effect a proposed regulatory change might have upon our ability to prosecute violations of the false statement statute. On several occasions the NRC alerted us in advance concerning its civil enforcement actions to protect the public health and safety so that the potential damage to any criminal investigation could be minimized or avoided entirely.

The Department will expend every effort to continue to build on this progress so that a more effective criminal law enforcement program can be developed in this field. We are currently engaged in negotiations with the NRC aimed at reaching a memorandum of understanding between our two agencies. This memorandum of understanding would clarify the respective responsibilities of the Department and the NRC in the criminal referral process and define procedures which would permit the NRC to meet its public health and safety obligations without undue harm to the criminal justice process. We are committed to developing such a memorandum of understanding and are hopeful our negotiations will soon produce substantial results.

Although the actions we are taking can contribute significantly to effective law enforcement, there is much more to be done in this field. Our experience with the NRC has identified two areas of particular concern. The first of these areas involves the need to strengthen the criminal investigative authority of the NRC.

Historically, NRC case referrals have involved complex, technical issues. Typically, these referrals present not only questions of criminality, but difficult issues of physics and engineering as well. In a field as complex as the nuclear power industry, the special expertise of investigators, like those from the NRC's Office of Investigations, is essential to a successful criminal investigation and prosecution. The Atomic Energy Act is not free from ambiguity on the issue of criminal investigative authority. Currently, as a general rule, the Office of Investigations conducts only civil investigations. Therefore, we receive criminal investigative assistance from that office only when we make a formal request for it as part of our criminal investigation in a particular case. When we make such a request, the ability of that office to continue its civil investigation may be curtailed.

A second, related concern involves the investigative independence of the NRC's Office of Investigations. This concern was the subject of an exchange of correspondence in 1985 between the Department of Justice and the NRC, copies of which have previously been provided to the Committee. We understand that the NRC's current practice is that the Office of Investigations retains full authority to refer matters to the Department of Justice, absent a Commission vote to the contrary. While we are generally satisfied with this practice we believe that every step should be taken to ensure the continued independence of this investigative office.

We believe that each of these two concerns is amenable to a legislative solution. In this regard we understand the Committee is considering legislation which would establish for the first time a statutory Inspector General within the NRC, who would perform audits and internal investigations of the activities of the Commission's staff. This proposed legislation would also establish a separate Office of Investigations at the NRC, which would investigate alleged misconduct by NRC licensees and contractors. Under the proposed legislation the NRC Inspector General and the Office of Investigations would be required to report to the Attorney General whenever it "has reasonable grounds to believe that there has been a violation of federal criminal law." This legislation would also seek to ensure the investigative independence of these two offices by providing that they are free to initiate, carry out and complete their investigations and referrals without any interference.

We agree as to the desirability of an independent investigative component within the NRC but should note that creation of a statutory Inspector General is not the only method for achieving this result. The Office of Professional Responsibility within the Department of Justice, for example, is widely respected as an independent investigative and prosecutive unit which functions so professionally that any effort to legislate its role might be more likely to hinder rather than enhance its performance. In short, there are other models besides that of the statutory Inspector General to which the Committee may wish to look in providing for an independent investigative unit within the NRC. As indicated above, our fundamental interest is to ensure that allegations of criminal misconduct are promptly referred to the Department of Justice.

The Committee may desire to consider legislation to clarify the existing ambiguity concerning the authority of the NRC to conduct criminal investigations. The statute should expressly state that the NRC has authority, concurrent with the Federal Bureau of Investigation, to conduct criminal investigations into violations of its statute and regulations by any persons or entities. On this issue of clarifying NRC authority to conduct criminal investigations, we do not intend to convert the NRC into a criminal investigative agency. Rather, its focus should continue to be primarily upon safety. To the extent that the Office of Investigations within the NRC detects criminal wrongdoing, however, and reports such matters to the Department of Justice, there should be no question as to the authority of the Office of Investigations to assist the Department of Justice in the investigation of such matters. Again, the highly technical nature of nuclear operations often makes it essential to have the benefit of NRC expertise to carry out a proper criminal investigation.

Moreover, any amendment to the Atomic Energy Act should clarify the authority of the NRC to impose civil penalties against individual wrongdoers who are not NRC licensees. There is some question as to whether the NRC currently has the legal authority to impose civil penalties against individuals who, although not licensees, may have caused regulatory violations by licensees. If civil penalties may only be imposed upon corporate licensees, there is no sanction, short of criminal prosecution, available to deter wrongdoing by individuals. We believe that civil penalties levied against individuals might, in appropriate cases, be a proper substitute for criminal prosecution and would provide a more effective continuum of deterrence. We recognize that the NRC is currently studying the desirability of such an expansion of civil penalty authority and will be interested in the results of that review. In our view, however, such an expansion would promote increased deterrence and would thus be in the public interest. We would be happy to work with the Committee and the Commission in fashioning appropriate statutory language to achieve these ends.

In concluding let me state, once again, that the Department of Justice is committed to effective law enforcement in this vitally important area. As part of this commitment the Department and the NRC have made substantial strides to improve the ability of our agencies to investigate and prosecute wrongdoing by nuclear licensees. We fully intend to continue with these efforts. However, we also believe that appropriate legislation amended as we propose, could promote our efforts.

Mr. Chairman, this concludes may prepared statement. I should be pleased to respond to any questions you may have.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Recd 4/8/87

Honorable John Glenn
Chairman, Governmental Affairs Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your March 4, 1987 letter to the Attorney General, which discusses current administrative practices at the United States Nuclear Regulatory Commission. In this letter you note that the United States Senate Committee on Governmental Affairs is currently reviewing the NRC's procedures for investigating and referring to the Department of Justice cases of potential criminal wrongdoing on the part of NRC employees, licensees and contractors. In connection with your review of these procedures you pose eight specific questions concerning existing NRC practices in this area and request that the Department provide written responses to these inquiries.

Enclosed please find our responses to these specific questions. We appreciate the opportunity to comment on these issues, which we regard as extremely important to effective law enforcement in the nuclear industry. We trust that these responses will be of assistance to you in conducting your review of NRC practices. Please let us know if you have any further questions concerning this matter.

Sincerely,

J. R. Bolton

John R. Bolton
Assistant Attorney General

Enclosure

RESPONSES TO QUESTIONS FOR THE ATTORNEY GENERAL FROM SENATOR JOHN GLENN, CHAIRMAN, UNITED STATES SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

I understand that the NRC's Office of Investigations (OI) conducts investigations of licensee misconduct, while its Office of Inspector and Auditor (OIA) performs audits and investigations of NRC programs and personnel. Moreover, I understand that DOJ, through then Assistant and now Deputy Attorney General Stephen Trott, has written to the NRC Chairman during the past year to express concern that "senior personnel" at the NRC have displayed "opposition to the detection and disclosure of deliberate wrongdoing by NRC licensees."

In order to aid my current review, I respectfully request that DOJ prepare a written response to the following specific inquiries.

1. What specific events or investigations triggered Mr. Trott's letter to then Chairman Palladino? (It would be helpful if a copy of Mr. Trott's letter and any written response from the NRC was appended to your written response.)

RESPONSE: The text which you quote in your correspondence comes from a March 18, 1985 letter from then Assistant Attorney General Stephen S. Trott to Nunzio Palladino, the Chairman of the Nuclear Regulatory Commission. This correspondence was triggered by a proposal within the NRC which would have changed the status of the NRC's Office of Investigations. The proposal which was then under consideration would have shifted the Office of Investigations from its current position as a Commission level office to a staff office. One consequence of this proposed shift would have been that the Office of Investigations would report to the NRC's Executive Director for Operations, instead of reporting directly to the Commission itself.

Because we believed that this change in the status of the Office of Investigations might affect its investigative independence, Mr. Trott wrote to Chairman Palladino on March 18, 1985 to express his concerns regarding this proposal. Enclosed please find a copy of Chairman Palladino's January 23, 1985 letter to the Department of Justice discussing this proposal, along with Mr. Trott's March 18, 1985 letter to the NRC. Also enclosed please find an April 22, 1985 response to Mr. Trott's letter from William J. Dircks, the NRC's Executive Director for Operations. Finally, enclosed please find Mr. Trott's July 9, 1985 reply to Mr. Dircks' letter, which reaffirmed our concern regarding the investigative independence of the Office of Investigations.

(3) Has the Commission responded satisfactorily to the concerns raised in Deputy Assistant Attorney General Victoria Toensing's letter of December 18, 1986 to William C. Parler, the NRC's General Counsel, concerning proposed changes in the definition of material false statement and other issues?

RESPONSE: As you know, in her December 18, 1986 letter to the NRC Deputy Assistant Attorney General Victoria Toensing discussed three concerns relating to a proposed NRC material false statement regulation. The most significant of these concerns involved the NRC's efforts to define for the first time in its regulations the term "material false statement." Because the NRC's proposed definition differed significantly from the definition of material false statement used in connection with criminal prosecutions under 18 U.S.C. §1001, we expressed concern that enactment of that section of the regulation might create confusion and hinder effective criminal prosecution of false statement cases. Accordingly, we suggested that this definition was unnecessary and recommended that it be deleted entirely from the regulation.

We are satisfied with the NRC's response to this suggestion. Following this exchange of correspondence the NRC agreed to delete completely this definition of material false statements from its regulation. By taking this action the Commission has avoided a potentially troubling issue in criminal cases and has enhanced our ability to effectively prosecute misconduct by NRC licensees.

In her December 18, 1986 letter Deputy Assistant Attorney General Toensing raised two issues of lesser significance with the NRC. First, Ms. Toensing suggested that the NRC reconsider its current civil penalty policy. Under this policy the Commission typically does not penalize individuals, but rather, only penalizes corporate licensees. In our correspondence we suggested that civil penalties levied against individuals might have a greater deterrent effect.

The NRC responded to this suggestion by advising us that it may not have the legal authority to impose civil penalties against individuals who are not NRC licensees. Nonetheless, the staff indicated that it would study this legal issue and determine whether it could recommend a broader civil penalty policy to the Commission. We understand that this question is still under review.

Finally in her December 18, 1986 letter Ms. Toensing discussed a residual reporting requirement which the NRC had proposed. Existing NRC regulations impose specific reporting requirements on licensees. In addition to these specific reporting obligations, the NRC's proposed regulation would have required licensees to report "information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security." This provision would have established a subjective standard for this reporting requirement. Thus, the licensee's judgment would control in determining whether information met the threshold for reporting established by this regulation. In our letter to the Commission, we suggested that an objective standard be substituted for this wholly subjective test. Thus, we recommended that this residual reporting requirement be extended to all incidents which are "reasonably identifiable" as having significant public health and safety implications.

The NRC declined to follow our suggestion and retained a subjective standard for this residual reporting requirement. It is our understanding that nuclear licensees are already specifically required by Commission regulations to make reports to the NRC in a wide variety of instances. Any willful violation of these specific reporting requirements would provide an independent basis for criminal prosecution. We have been told that the residual reporting requirement which the NRC recently adopted will come into play in only those very few instances where the Commission staff had not anticipated the need for a specific reporting requirement.

4(A). Does DOJ support the current NRC requirement that all referrals of potential criminal cases be subject to a prior review by the Commission and its General Counsel prior to referral to DOJ? Was DOJ told of this procedure?

RESPONSE: It is our understanding that, absent a vote by the Commission to the contrary, the Director of the NRC's Office of Investigations currently retains the authority to refer any matter which he deems appropriate to the Department of Justice for its consideration. Moreover, to our knowledge this referral policy has not affected the prompt referral of matters to the Department of Justice. The Committee may wish to contact the NRC directly to obtain further clarification of its policy in this regard.

(B). What would the Department do if the Commission directed OI or OIA not to refer such a matter, but the Director of either Office had determined that the matter merited DOJ review?

RESPONSE: We understand that the NRC's Office of Investigations, absent a vote by the Commission to the contrary, retains full independence to refer matters to the Department of Justice. Accordingly, we are unaware of any instance in which the Commission has refused to refer a meritorious case to the Department of Justice for its consideration. Should we become aware of such a case, we would contact the NRC directly and request that the matter be referred to us for our review. In the unlikely event that this should occur, we are confident that the NRC would honor our request and promptly refer the matter to the Department for its review.

5(A). I understand that there has been at least one occasion when OI referred a matter to DOJ for criminal review, while the Commission had simultaneously determined that the licensee's actions did not constitute a deliberate or willful violation in the context of NRC administrative proceedings. How many times has such a situation occurred?

RESPONSE: The incident to which you refer in your question occurred in a case which is currently the subject of a pending criminal prosecution. Because this incident may be the subject of litigation in this pending prosecution it would be inappropriate for us to comment on NRC practice at this time.

(B). In general and apart from the facts of any specific case, what problems, if any, does such a situation present for the Department?

RESPONSE: It would be inappropriate to comment, even in general terms, on the problems which this NRC practice may present because of the pending litigation referred to in response to question 5(A).

6(A). How many cases has OIA referred to DOJ for criminal review since OIA and OI were split into separate organizations?

RESPONSE: The Department of Justice does not maintain statistics concerning the number of matters referred by the NRC's Office of Inspector and Auditor for criminal review. The Committee may wish to contact the Office of Inspector and Auditor directly to obtain this information.

(B). Have any prosecutions resulted from these OIA referrals?

RESPONSE: See answer to 6(A) above.

(C). Please provide a case summary concerning each OIA referral.

RESPONSE: See answer to 6(A) above.

7. Does DOJ see any need for a statutory Inspector General at the NRC ? please set forth the information you believe supports DOJ's conclusion.

RESPONSE: At this time we are necessarily limited in the information which we can provide in response to this question. In large measure our views concerning the appropriateness of any such legislation would depend upon the specific legislative proposal advanced. A statutory Inspector General is not necessarily appropriate for every Agency and Department in the government.

In enacting such legislation, the role of the Inspector General in the regulatory process would have to be carefully considered. It is unclear to us whether the Committee would envision the same role for an NRC Inspector General as that defined in the Inspector General Act or whether the NRC Inspector General would also be responsible for investigating misconduct by NRC licensees.

In sum, we believe that it would be inappropriate to comment in the abstract on the need for specific legislation establishing an Inspector General for the NRC. However, we will be happy to review and comment upon any specific legislative proposals advanced by Congress.

8. Is there a need for a professional criminal investigative organization at the NRC to investigate criminal wrongdoing by NRC licensees? Would such investigations have a deterrent effect upon licensee conduct? Should the Atomic Energy Act be amended to require the NRC to conduct such investigations?

RESPONSE: We believe that there is a need for a criminal investigative organization at the NRC to investigate allegations of criminal wrongdoing by NRC licensees. Our experience with referrals from the Nuclear Regulatory Commission has shown that these matters often involve complex, technical issues. In an industry as complex as the nuclear power industry, the expertise and experience of investigators, like those from the NRC's Office of Investigations, is often essential to a successful criminal investigation and prosecution. The Commission has taken the position that the investigators in OI are only authorized to conduct civil investigations. Therefore, we currently receive criminal investigative assistance from the NRC's Office of Investigations only when we make a special request that an OI investigator be assigned to assist us in our criminal investigation.

Although it may be possible that NRC investigators are currently legally authorized to investigate criminal matters, we recognize that there may be some ambiguity to the existing statutory scheme. Accordingly, we agree in principle that the Atomic Energy Act should be amended to make it clear that NRC investigative personnel have statutory authority to investigate criminal wrongdoing by nuclear licensees. The authority, of course, should be concurrent with existing investigative authority of the Federal Bureau of Investigation. We will be happy to work with the Committee in fashioning appropriate legislative language. Such legislation, in our view, would promote effective law enforcement and deter deliberate misconduct of nuclear licensees.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

Copy with background placed in FY 86 Budget

January 23, 1985

The Honorable William French Smith
Attorney General
Washington, DC 20530

Dear Mr. Attorney General:

On January 11, 1985, Mr. Julian Greenspun, an Attorney in the Department of Justice, requested that the Department of Justice be given an opportunity to comment on a matter that is being considered by the Nuclear Regulatory Commission in connection with our FY 1986 budget submission. The specific matter involves a possible change in the reporting relationship of our Office of Investigations (OI).

By way of background, both the House Appropriations Committee and the Office of Management and Budget have indicated that the Nuclear Regulatory Commission should reduce the number of persons reporting directly to the Commission as part of the FY 1986 budget. The Commission is considering a number of options for making such reductions, one of which is to have OI report to the Executive Director for Operations (EDO) rather than directly to the Commission.

In view of Mr. Greenspun's request, we would like to receive any comments that the Department of Justice may have about this matter.

Sincerely,

Nunzio J. Palladino

Nunzio J. Palladino

U.S. Department of Justice

Criminal Division

[illegible]

Office of the Assistant Attorney General *Washington, D.C. 20530*

MAR 18 1985

Honorable Nunzio J. Palladino
Chairman
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Palladino:

Thank you for your letter of January 23, 1985, concerning a possible realignment of the NRC's Office of Investigations. The Office of Investigations (OI) has been reporting directly to the NRC Commissioners. The contemplated realignment would place OI under the Office of the Executive Director for Operations (EDO). Thus, the realignment would not merely involve a change in reporting relationships, but one of control over OI. For the reasons discussed below, the Department recommends against the contemplated realignment which would subordinate OI to another NRC component, and which we believe would undermine OI's independence.

The Office of Investigations was created in 1982 and was required to report directly to the Commissioners as a result of Congressional and public concern over serious difficulties in the NRC's ability to detect and report violations of law by its licensees. Since OI's creation, we have observed that it has been fulfilling its responsibilities to detect, investigate and report suspected violations to the Commission and the Department of Justice in a professional, competent and trustworthy manner.

However, this important responsibility may be and has been at odds with other activities under the umbrella of EDO. Personnel and organizational components within and under the EDO's office not only inspect nuclear facilities under operation or construction, but have also been sponsoring licensee applications before NRC administrative boards. Thus, the existence, detection and full disclosure of violations by OI may not only be (and have been) inconsistent with prior NRC inspection reports, but with positions taken by the NRC before its licensing boards. At a minimum then, such dual operational authority and responsibility under the contemplated realignment could generate doubt and suspicion about the results of even the most conscientious OI investigation. Moreover, such conflicts and potential conflicts which would inevitably arise under the contemplated realignment could jeopardize the full disclosure and fair adjudication of violations of laws.

Experience itself has shown the importance of maintaining the independence of the Office of Investigations from the responsibilities, perspectives or agendas of other NRC components, and the need for the Office of Investigations to report directly to the Commission. Prior to and since the creation of OI there has been some opposition as well as resistance within the NRC to the detection and disclosure of deliberate wrongdoing by NRC licensees. In this regard, several NRC Commissioners have already expressed concern that personnel within these components have not disclosed information in their possession disclosing the likelihood of violations by licensees. Senior personnel within the NRC who could affect or influence OI's ability to detect and report violations if it were realigned may have contributed to this problem.

Prior to the creation of the Office of Investigations, the Department of Justice received very few referrals from the NRC. 1/ In contrast, however, the Department has received approximately 23 referrals of cases developed by OI.

We also understand that certain licensees and their representatives favor the proposed realignment, as well as a reduction in the number of OI investigators. Efforts by those who may be or have become subjects of OI investigations to restrict its ability to obtain evidence are not unique. When the creation of OI was announced by the Commission in 1982, representatives of licensees proposed the establishment of an NRC advisory committee on investigative procedures for the professed purpose of helping NRC investigators obtain complete and truthful information from licensee employees. As discussed in our previous written comments on that subject, the real effect of their proposals would be to inhibit the ability of OI to ferret out violations of law by the imposition of investigative restrictions that go well beyond those required by constitutional, statutory or case law.

1/ Prior to the creation of OI, two of the more prominent cases only came to the Department's attention after employees of the respective NRC licensees publicly disclosed the same violations that they had previously reported to the NRC.

The foregoing considered, and in view of your February 6, 1985 letter to Congressman Udall in which you assured him that the Commission has no desire to undermine the effectiveness or independence of OI, the Department strongly recommends that OI not be realigned.

Sincerely,

STEPHEN S. TROTT
Assistant Attorney General
Criminal Division

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

APR 22 1985

Stephen S. Trott, Esq.
Assistant Attorney General
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Trott:

Chairman Palladino has asked me to write to you to clarify the role of the staff in the regulatory process. His request to me arose from the statement in your March 18, 1985 letter to him that indicated that you believe that the staff is "sponsoring" licensee applications before NRC Hearing Boards. I do not intend to comment on the merits of realigning the Office of Investigations within the Commission.

In the first instance, the staff does not, as your letter suggests, "sponsor" license applications before NRC administrative tribunals. The staff is responsible for reviewing applications for a license and determining whether the application, in light of all relevant information, meets the requirements established by the Commission for issuance of a license. To this end, the staff issues safety evaluation and environmental reports as necessary to satisfy our obligations under the Atomic Energy Act and the National Environmental Policy Act. Under current Commission practice, the staff is a party to licensing proceedings, not to sponsor an application, but to present the results of its evaluation of the license application and to provide other information bearing upon the licensing decision. It is important to recognize that during the review process, which can take a number of staff years of effort particularly in reactor licensing, the staff has many discussions with the applicant. In most cases, the applicant provides additional information or revises its application such that, at the end of the review process, the staff is satisfied that a license can be issued. (However, there have been instances where, during the hearing process, the staff has opposed an entire application or, more frequently, one or more parts of an application.) Ultimately, however, the license applicant bears the burden under the Atomic Energy Act of demonstrating that it meets the licensing standards established by the Commission.

More importantly, I am concerned that you view the responsibility and authority of the Office of Investigations as different or in conflict with the responsibility and authority of other staff offices. Naturally, the particular functions of individual offices within the Commission differ. Just as reactor engineering expertise is focused in the Office of Nuclear Reactor Regulation, investigative expertise has been focused in the Office of Investigations. While their functions or expertise may differ, the roles of the Office of Investigations and the staff offices are in fact the same--to ensure that the Commission meets, primarily through its licensing and enforcement functions, its responsibility under the Atomic Energy Act to protect public health and safety. Perhaps nothing illustrates better that these roles are the same than to note that the staff--primarily through the NRC's regional offices and the headquarters program offices--requests the initiation of the substantial number of the investigations conducted by the Office of Investigations. The results of those investigations play an important part in the staff's licensing and enforcement decisions.

I hope that this letter will help to clarify your understanding of the staff's regulatory responsibilities and the mutually reinforcing roles of all NRC components in serving the public interest. I would be pleased to meet with you to discuss the staff's responsibilities at greater length. Such an exchange could be beneficial in understanding the Commission's regulatory program and our role in serving the public interest.

Sincerely,

William J. Dircks
Executive Director for Operations

cc:
B. Hayes, OI

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JUL 0 5 1985

Mr. William J. Dircks
Executive Director for Operations
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Dear Mr. Dircks:

Thank you for your letter of April 22, 1985 concerning a contemplated realignment of the Office of Investigations. While we take note of your views, we do not believe a meeting is necessary at this point. Moreover, we believe the importance of maintaining the independence of the Office of Investigations as previously discussed by us is not diminished by the matters raised in your letter.

Sincerely,

/s/ STEPHEN S. TROTT

Stephen S. Trott
Assistant Attorney General
Criminal Division

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

19 MAY 1987

Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your April 15, 1987 letter, which discusses current administrative practices at the United States Nuclear Regulatory Commission (NRC). In this letter you note that on April 9, 1987, the United States Senate Committee on Governmental Affairs held a hearing regarding the NRC's procedures for investigating and referring cases of potential wrongdoing to the Department of Justice. At that hearing a statement from the Department of Justice was admitted for the record. Following this hearing you have now requested our assistance in answering six additional questions concerning NRC practices in this area.

Enclosed please find our responses to those specific questions. We trust that this information will be of assistance to you in conducting your review of NRC practice and procedures. Please feel free to contact us if you have any further questions concerning this matter.

Sincerely,

John R. Bolton
Assistant Attorney General

Enclosure

1. Does the Department of Justice have any objection to the creation of a statutory inspector general position in the Nuclear Regulatory Commission?

RESPONSE: We believe that every reasonable step should be taken to ensure the independence of the investigative offices within the Nuclear Regulatory Commission. We note, however, that the creation of a statutory Inspector General is not the only way to achieve such independence. Indeed, a statutory Inspector General may not be appropriate for every federal Agency or Department. For example, within the Department of Justice the Office of Professional Responsibility operates with such highly regarded investigative independence that there would be no need for a statutory Inspector General. In short, our primary concern is that evidence of criminal misconduct in the nuclear field be reported promptly to the Department of Justice. To the extent that any proposed legislation enhances the ability of NRC investigative offices to make prompt referrals to the Department, that concern is met. While creation of a statutory Inspector General at the NRC might promote prompt referrals, we note that it is not the only way by which this result can be achieved. Therefore, the Committee may also wish to consider other legislative approaches to guarantee the independence of these investigative offices.

2. From the records the Committee reviewed, it appears that no referral of a potential criminal matter from the Office of Inspector and Auditor in the last couple years has led to a criminal prosecution by the Justice Department, let alone any convictions. Please comment on the significance of that fact.

RESPONSE: The Department of Justice does not maintain statistics concerning the number of prosecutions resulting from case referrals made by the NRC's Office of Inspector and Auditor. Therefore we are unable independently to determine whether these referrals have led to any criminal prosecutions.

Moreover, we cannot draw any broad conclusions from our recent experience with these case referrals. As you know, prosecutive decisions necessarily involve judgments of both law and fact. In every instance we must determine whether we can satisfy the requisite legal standard and establish a violation of some federal criminal statute beyond a reasonable doubt. Therefore, a decision to decline prosecution of a given case should not be construed as suggesting that the case referral was in some way inappropriate.

3. In your written statement at pages 2-3, you state that on several occasions the NRC took actions so that the potential damage to any criminal investigation could be minimized or avoided. Are you aware of any instances when NRC actions had just the opposite effect, that is, a Justice Department criminal investigation or prosecution was compromised or damaged? If so, please provide details of these examples.

RESPONSE: As we noted in our prepared statement to the Committee the Department of Justice has at times in the past experienced some difficulties in coordinating its criminal enforcement efforts with the NRC. However, we are not prepared to state that any of these difficulties compromised or significantly damaged any otherwise meritorious criminal cases. Moreover, as we previously stated, we believe that our working relationship with the NRC has improved recently. We expect that this relationship will continue to improve as our two agencies work together to achieve our complementary missions in the nuclear field.

4. I understand that in the D.C. Cook case, the NRC's Office of Investigations referred the matter to the Department for criminal review, while the Commission had simultaneously determined that the licensee's actions did not constitute a deliberate or willful violation in the context of NRC administrative proceedings. In general and apart from the facts of the D.C. Cook case, what problems, if any, does such a situation present for the Department?

RESPONSE: The incident to which you refer in your question occurred in a case which is currently the subject of pending litigation. Because this incident may be the subject of litigation in this pending matter it would be inappropriate for us to comment on the NRC practice at this time.

5. According to current NRC policy, the Commission is consulted on all Office of Investigations proposed referrals involving material false statements? Is the Justice Department in favor of that NRC policy, and if not, what changes would you recommend?

RESPONSE: We understand that the NRC may have recently revised its policy in this regard and eliminated the requirement that all Office of Investigations criminal referrals involving material false statements be sent to the Department through the Commission. The Committee may wish to consult with the NRC directly to discuss this recent change in Commission policy.

6. On the subject of the Office of Investigations, in March 1985, a senior official in the Justice Department wrote to then Chairman Palladino objecting to the proposal to place OI under the NRC's Executive Director for Operations. In that letter, Mr. Trott wrote that "prior to and since the creation of OI there has been some opposition as well as resistance within the NRC to the detection and disclosure of deliberate wrongdoing by NRC licensees." Do you agree that OI should continue to be supervised by and report to the Commission and not to the EDO?

RESPONSE: We strongly believe that all reasonable steps should be taken to guarantee the continued investigative independence of the NRC's Office of Investigations. Accordingly, we are pleased that the NRC elected in 1985 to maintain the Office of Investigations as a Commission level office, since in our view that decision has promoted the investigative independence of that office. We agree that the Office of Investigation should continue to report directly to the Commission.

[illegible]

MIDDLE SOUTH SERVICES, INC/BOX 61000/NEW ORLEANS, LA 70161/(504) 529-5262

GEORGE E. WHITE JR
VICE PRESIDENT

MEMORANDUM

June 15, 1983

CONFIDENTIAL

TO: Mr. John J. Cordaro

FROM: George E. White

RE: NRC Consideration of Waterford QA

Attached is a memorandum which I have received from sources inside the Nuclear Regulatory Commission regarding Waterford Quality Assurance matters. This memo is for your information but I would hope that you would limit its distribution to protect the source within the NRC.

GEW:pdb
cc: Mr. F. W. Lewis
Mr. F. C. Smith
Mr. J. M. Cain
Mr. W. Cavanaugh

(Dictated from Washington)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

[illegible]
Waterford

June 8, 1983

83 JUN 9 A8:54

MEMORANDUM FOR: RICHARD C. DEYOUNG, DIRECTOR
OFFICE OF INSPECTION AND ENFORCEMENT

FROM: James K. Joosten, Technical Assistant to Commissioner Gilinsky JJ

SUBJECT: WATERFORD QA

Enclosed are copies of documentation which I have recently received from Mr. Ron Ridenhour, a free-lance reporter for Gambit Publications in New Orleans, concerning allegations of deficient QA practices at Waterford. Mr. James Taylor, from your office, has been following this issue since April 19, 1983, and has requested this information in order to more carefully focus his review and investigation into their substance. Since I had been the initial contact between Mr. Ridenhour and the NRC, I agreed to obtain this information for Mr. Taylor. However, at this point in time, I think it would be appropriate if your office took the lead, as was agreed in the April 19th meeting, and work with Mr. Ridenhour directly. I have discussed this with Mr. Ridenhour during our last few phone calls and have provided him with Mr. Taylor's phone number.

I would like to bring to your attention two specific items. First, Mr. Ridenhour is very concerned over new cracks in the containment basemat which were discovered on May 11, 1983, by the licensee and may have been withheld from NRC review. Secondly, Mr. Ridenhour has expressed concerns on several occasions, over the degree of objectivity of regional inspectors, who reviewed initial QA and basemat cracking issues. He appears to feel there is some evidence to suggest collusion with the licensee. In view of this, I would strongly suggest that appropriate measures be taken to assure an objective review to his allegations.

If there is anything further I can do, please let me know.

Enclosures:
As stated

cc: D. Garner
J. Milhoan
S. Chesnut
J. Austin
EDO
SECY

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GAMBIT • The Newspaper
THE CITY • New Orleans for Visitors
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840 N. Rampart St. New Orleans, La 70116 (504) 525-5900

May 31, 1983

Mr. Jim Joosten
Office of Commissioner Victor Gilinski
U.S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, D.C. 20555

Dear Jim:

Enclosed are copies of everything I have written dealing specifically with quality assurance problems at Waterford. Also enclosed are copies of most of the documents that we have detailing the problems with the cracks in the common foundation mat out there.

The article dealing with the contract disputes between Combustion Engineering and includes much of the information that we have. I am also including a copy of a letter we wrote to LP&L regarding that problem and asking them to provide us with a list of documents, which are named by number and company code. That should put you on the right track there. My understanding of this dispute and its implications is that (one) there should be a long history of correspondence between these firms, including minutes of many meetings, etc., and (two) it is a very serious problem that LP&L really doesn't know the answer to. Did CE maintain an adequate QA/QC program on its Waterford project? LP&L doesn't know, but wants desperately to believe that the answer is yes. Based on what these documents show, an ambiguous picture at best, plus the assessment of LP&L's own QA auditor, it is hard for me to believe that CE did maintain the program. My guess is that they maintained the contracted for program, one that was far below NRC-mandated standards until the dispute was finally resolved -- a process that took over five years.

All of this points towards the contention raised in the first piece we did on LP&L's QA program out there: it was inadequate for a very, very long time. LP&L may or may not have a safe plant at Waterford. The problem is that even they don't know, couldn't know now even if they have a desperate desire to. The discovery of the most recent cracks in the foundation, we believe, punctuates this point. We believe the problems out there are very, very serious. I've been doing research in the PDR and I think I can show that that is the case and has been the case since the mid-70's. It is, based on the record, a problem the NRC seems to be unfortunately complicit in.

I hope this material will help you. If there is anything further that I can do, lease let me know.

Sincerely,

Hay. Ex 5, 3/26/87

ENCLOSURE 1

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

CHAIRMAN

March 14, 1985

LIMITED DISTRIBUTION

MEMORANDUM FOR: Ben B. Hayes, Director
Office of Investigations

FROM: Nunzio J. Palladino

SUBJECT: JUNE 15, 1983 MEMO DISCOVERED DURING INVESTIGATION

With regard to the June 15, 1983 memo from George E. White to John J. Cordaro, I discussed this matter with Commissioner Roberts. Since, under the Reorganization Plan of 1980, supervision of personnel within the immediate office of each member of the Commission is that Commissioner's responsibility, Commissioner Roberts believes (and I concur) that this is a matter for him to deal with. Therefore, you should discuss it with him as soon as possible. I have given Commissioner Roberts the two copies of the June 15, 1983 memorandum that you left with me.

cc: Commissioner Roberts
[Commissioner Asselstine]
[Commissioner Bernthal]
[Commissioner Zech]

Commissioner Roberts
to deliver to these
Commissioners.

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